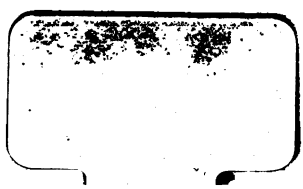

GENERAL RULES

OF

THE COURTS

OF

KING'S BENCH, COMMON PLEAS,

AND

EXCHEQUER OF PLEAS,

SINCE THE STATUTE 11 GEO. IV. & 1 W. IV. c. 70.

WITH

INTRODUCTORY STATEMENTS OF THE PRACTICE, AS IT EXISTED BEFORE, AND IS AFFECTED BY THE ABOVE RULES:

ARRANGED IN THE ORDER OF

TIDD'S PRACTICE;

AND INTENDED AS A

FURTHER SUPPLEMENT TO THAT WORK.

WITH AN

APPENDIX

OF PRACTICAL FORMS, ADAPTED TO THE RULES;

AND A

COPIOUS INDEX.

By WILLIAM TIDD, Esq.

OF THE INNER TEMPLE, BARRISTER AT LAW.

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1832.

G. WOODFALL, ANGEL COURT, SKINNER STREET, LONDON.

ADVERTISEMENT.

SINCE the late Act, for the more effectual administration of justice in *England* and *Wales*[a], many highly useful and important general Rules of practice have been promulgated by the court of Exchequer, in *Michaelmas* Term, 1830; and by all the judges of the courts of King's Bench, Common Pleas, and Exchequer, in *Trinity* term, 1831, and *Hilary* term, 1832.

The Rules of the court of Exchequer, were principally occasioned by the admission of attornies of the King's Bench, and Common Pleas, to practise in that court, under the 10th section of the above act; and by the transfer of suits at law thereto, under the 14th section, from the courts of Session of *Chester*, and Great Sessions in *Wales:* and they may accordingly be classed under three heads, first, respecting officers of the court, and their fees; secondly, points of practice, relating to matters over which that court has a *peculiar* jurisdiction; and thirdly, the times and modes of proceeding in that court, on the removal of causes from *Chester* and *Wales*.

The general Rules, promulgated by all the judges, are founded on the 11th section of the above act, by which it is enacted, that "in all cases relating to the practice of any of the courts of King's Bench, Common Pleas, or Exchequer, in matters over which the said courts have a *common* jurisdiction, it shall be lawful for the judges of the said courts jointly, or any *eight* or more of them, including the chiefs of each court, to make general rules and orders for regulating the proceedings of all the said courts."

[a] 11 Geo. IV. & 1 W. IV. c. 70.

The Rules of *Trinity* term, 1831, chiefly relate to the putting in and justifying of special bail; the shortening of declarations, in actions of *assumpsit*, or *debt*, on bills of exchange, or promissory notes, and the common counts; the delivery of particulars of the plaintiff's demand, under those counts; the time for delivering declarations *de bene esse*, and service of declarations in *ejectment*; the time for pleading; rules to plead several matters; and judgment of *nonpros*, &c.

The chief object and intention of the general Rules promulgated by all the judges, in *Hilary* term last, seem to have been, (as expressed in the preamble to the first rule,) that the Practice of the courts of King's Bench, Common Pleas, and Exchequer of Pleas, should, as far as possible, be rendered uniform: and they will be found to contain many very important regulations, calculated to settle and improve the practice of the courts, and to render the proceedings therein more expeditious, and less expensive to the suitors. For these purposes, the *Time* required and allowed for different proceedings, in the course of the suit, is fixed and ascertained: *Notices*, and *demands*, are required to be given and made in particular cases, to prevent surprise upon the parties: Some *Rules*, and *Entries* of proceedings, which were considered unnecessary, have been abolished: Other rules, which were formerly drawn up on the signature of counsel, may now be obtained on a judge's order, or application of the party; and several rules, which were formerly rules *nisi* in the Common Pleas, are directed in future to be absolute in the first instance: *Costs* are not allowed to the plaintiff, for repeating the original writ, in declarations in trespass, and ejectment, &c.; nor upon any counts, or issues, upon which he has not succeeded: and the costs of all issues found for the defendant, are directed to be deducted from the plaintiff's costs. Some salutary regulations are also made, in order to lessen the expense of witnesses.

To elucidate and explain the foregoing Rules, which appear to have been framed with great care and accuracy, it occurred to the Author of the "Practice of the Courts of King's Bench," &c. that it might be useful to publish the Rules, with short introductory statements of the practice, as it existed before they were made; and to arrange them in the order in which they happen in the course of the suit. With that view, he has employed so much of his time, during the present vacation, as was not necessarily occupied by professional business, in extracting from the *ninth* edition of his book, such passages as seemed to be applicable to the late rules: and as no better arrangement suggested itself, he has adopted that of the above work; to which the present publication is intended as a further Supplement.

The whole of the Rules will be found in the following pages; and each rule, for the most part, forms a separate paragraph, stating, when necessary, the previous practice, and afterwards the rule itself. To each paragraph there is a marginal abstract of its contents, under which will be found the page, or pages, in the *ninth* edition of the *Practice*, to which it relates.

An *Appendix* is added of *Practical Forms*, prescribed by the Rules, or which may be of use to the Practitioner in acting under them. And there is a Table prefixed to the work, of all the Rules contained therein; and also, for the convenience of former purchasers, a Table of Parallel Pages, in the last three editions, where the rules may be introduced or referred to.

To the whole there is a copious *Index*, in which the Practical Forms are included; and particular attention has been paid to the titles, *Affidavits, Bail, Costs, Declaration, Motions, Notice, Pleas* and *Pleading, Rules,* and *Time:* and all the rules in the "Exchequer of Pleas," are indexed under that title.

In addition to the Rules of Court, some observations will be found, in the fifth Chapter, on the *Terms*, and Returns of original writs, &c. as they are now fixed and regulated by the statutes 11 Geo. IV. & 1 W. IV. c. 70. § 6. & 1 W. IV. c. 3.; and, in the *Appendix*, there is a general Table of Terms and Returns, and a particular one, of those for the present year.

TEMPLE,
March 28th, 1832.

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* The Rules being arranged in the order of *Tidd's* Practice, the Chapters are numbered accordingly, so as to correspond with the *ninth* Edition of that work.

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Page 12. in margin, *for* 304. *read* 301.
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33. (*d.*) *for* § 7. *read* § 6.
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GENERAL RULES, &c. &c.

CHAP. II.*

Of the OFFICERS *of the* COURTS, *and their* FEES, &c.

Fee to prothonotaries, for entry of declaration, in C. P. *Prac.* 47.

IN the Common Pleas, by a late rule [a], reciting that, by the ancient course of this court, the fee paid to the *prothonotaries* for the entry of every declaration in a cause, has hitherto been of right payable at the time of filing thereof; and that it was expedient that for the future the practice of the court should be made conformable to that of the respective courts of King's Bench and Exchequer, so far as regards the time of such payment; it is ordered, that "from and after the essoign day of the then next *Trinity* term, "the fee due to the said prothonotaries for such entry as aforesaid, "may be paid at any time previously to entering the issue, or passing the record in each cause; or in case there shall be no record, "at any time previously to signing interlocutory or final judgment: "And further, that in all cases where there shall be no judgment, "the said fee shall be payable at the time of taxing costs, where "the proceedings in any cause are stayed, or such cause terminated "by any rule of this court, or order of a judge."

Rules respecting officers of the court of Exchequer, and their fees. *Prac.* 58.

In pursuance of the late act, for the more effectual administration of justice in *England* and *Wales* [b], the following rules were made by the Barons of the Exchequer, respecting the officers of the court of Exchequer of Pleas, and their fees:

Fees of sworn and side clerks.

That "the several fees thereunder mentioned [c], shall and may "continue to be taken by the sworn and side clerks of this court, "the same being for duties to be performed by them as officers of

* The rules being arranged in the order of *Tidd's* Practice, it has been thought right to number the Chapters accordingly, so as to make them correspond with that work.

[a] R. E. 1 W. IV. 7 Bing. 555, 6.

[b] 11 Geo. IV. & 1 W. IV. c. 70. § 10.

[c] Append. § 1.

CHAP. II.

"the court, similar to the duties of the other superior courts: And "it is further ordered, that, in the taxation and allowance of costs, "such fees shall be distinguished from, and form no part of the "fees and charges which shall be allowed to the attornies who "have been, or shall be admitted to practise, under and by virtue "of the said act, but the same shall be allowed as disburse-"ments." [a]

Duties of sworn and side clerks.

That "the several duties for which fees are appointed in the said "schedule, shall be performed by the sworn and side clerks of the "said office, or their sufficient deputies or deputy, on the request of "the persons admitted to practise as attornies in this court, within "the hours and times thereinafter appointed, whereupon such fees "as aforesaid shall become payable." [b]

Duties of master.

That "the several duties theretofore performed by the clerk of "the pleas, or his deputy, at the instance of the sworn or side "clerks of the office of pleas, shall thereafter, at the instance of, "and for the attornies admitted as aforesaid, be in like manner per-"formed by the said clerk of the pleas, or his deputy, on payment "of his lawful fees for the same." [c]

Office hours, at Exchequer office.

That "the said office of pleas shall be kept open for business "every day, (*Sundays*, *Christmas* day, *Good* Friday, *Easter* Monday, "*Ascension* day, and *Midsummer* day, and days appointed for public "feasts, thanksgiving, or fasts, excepted,) from the hour of *eleven* in "the morning, till *three* in the afternoon, and from *five* o'clock in the "afternoon, till *nine* o'clock at night, during term, and for *sixteen* "days after an issuable term, and for *ten* days after a non-issuable "term; and at other times, till *seven* o'clock in the evening." [d] And, by a subsequent rule [e], "the Exchequer office of pleas is to be

[a] R. M. 1 W. IV. *reg.* 1. § 1. 1 Cromp. & J. 270. 1 Tyr. Rep. 154, 5.

[b] *Id.* § 2. 1 Cromp. & J. 272. 1 Tyr. Rep. 156.

[c] *Id.* § 3. 1 Cromp. & J. 272. 1 Tyr. Rep. 156. It may here be proper to notice, that there is a bill brought in by Lord *Lyndhurst*, and now depending in Parliament, for the better regulation of the duties to be performed by the officers on the plea or common law side of the Court of Exchequer; by which it is intended that there shall be *five* principal officers on the plea side of that court, exclusive of the clerk of the pleas, whose office is not to be again filled up, but to cease and determine upon his demise; and that *three* of these officers shall perform the duties of master and prothonotary, another the duties of clerk of the rules, and the other the duties of filazer of the said court; and the said officers shall be styled and designated accordingly.

[d] R. M. 1 W. IV. *reg.* 1. § 4. 1 Cromp. & J. 272. 1 Tyr. Rep. 156.

[e] R. M. 2 W. IV. 2 Cromp. & J. 1.

"kept open as follows, that is to say, during *term*, and one week "after every term, from *eleven* o'clock in the morning, until *three* "o'clock in the afternoon, and from *six* to *nine* o'clock in the even- "ing; and at other times, from *eleven* o'clock in the morning, un- "til *four* o'clock in the afternoon, the usual holidays excepted, "when the said office is to be closed."

Appointment of attornies, to prosecute or defend actions previously commenced.

And that "in all actions which, before the first day of the then "present term, were pending in this court, the parties, plaintiffs or "defendants, shall and may be at liberty to apply to one of the ba- "rons of this court, for an order appointing any person, who shall "then be an attorney of this court, to be his or her attorney, in "further prosecuting or defending such action, upon undertaking to "pay the sworn or side clerk previously employed by him, his costs "incurred in such action, to be taxed, if required, by the master; "and that service of such order on the opposite party or parties, or "his or her attorney, shall be sufficient notice to him or them of "such appointment." [a]

[a] R. M. 1 W. IV. *reg.* 1. § 5. 1 Cromp. & J. 272, 3, 4. 1 Tyr. Rep. 157.

CHAP. III.

Of the ENTRY *of* ATTORNIES' NAMES, *and* PLACES *of Abode; and* SERVICE *of* NOTICES, &c. *in* EXCHEQUER *of* PLEAS.

Entry of attornies' names and places of abode, in book kept at master's office in Exchequer. *Prac.* 72. 500.

IN the Exchequer of Pleas, there is a rule [a], similar to that in the King's Bench, of *Hil.* 8 Geo. III., that "the clerk of the pleas, or "his deputy, shall forthwith cause to be prepared, a proper alpha- "betical book, for the purposes after mentioned; and that the same "shall be publicly kept at the office of the clerk of the pleas, to "be there inspected by any attorney admitted to practise in that

[a] R. M. 1 W. IV. *reg.* II. § 8. 1 Cromp. & J. 277, 8. 1 Tyr. Rep. 160.

CHAP. III.

" court, or his clerk, without fee or reward; and that every attor-
" ney admitted in this court, and residing in *London*, or within *ten*
" miles of the same, shall forthwith enter in such book, in alpha-
" betical order, his name and place of abode, or some other proper
" place in *London*, *Westminster*, or the borough of *Southwark*, or
" within one mile of the said office, where he may be served with
" notices, summonses, orders, and rules, in causes depending in this
" court; and every attorney hereafter to be admitted, and prac-
" tising and residing as aforesaid, shall, upon his admission, make
" the like entry; and as often as any such attorney shall change
" his place of abode, or the place where he may be served with no-
" tices, summonses, orders, and rules, he shall make the like entry
" thereof in the said book." And that "all notices, summonses,
" orders and rules, which do not require personal service, shall be
" deemed sufficiently served on such attorney, if a copy thereof be
" left at the place lastly entered in such book, with any person re-
" sident at or belonging to such place; and if any such attorney
" shall neglect to make such entry, then the fixing up of any no-
" tice, or the copy of any summons, order or rule for such attorney,
" in the said office of pleas, shall be deemed as effectual and suf-
" ficient, as if the same had been served at such place of residence
" as aforesaid."

Service of notices, &c. not requiring personal service.

There is also a rule, in the Exchequer of Pleas[a], that "in all
" cases where the defendant shall have appeared in any action in
" the office of pleas, and in cases where the plaintiff has entered
" appearance therein according to the statute, and the defendant
" shall, by an attorney of that court, have given notice in writing to
" the attorney for the plaintiff, or his agent, of his being authorized
" to act as attorney for such defendant, all proceedings, notices, and
" summonses, rules and orders, which, according to the practice of
" that court, were theretofore delivered by the sworn or side clerks
" of the other party, plaintiff or defendant, be delivered to, or served
" upon the attorney or attornies of the other party, plaintiff or de-
" fendant."

Service of notices, &c. after appearance. *Prac.* 72. 500.

[a] R. M. 1 W. IV. *reg.* II. § 9. 1 Cromp. & J. 278. 1 Tyr. Rep. 160, 61.

CHAP. IV.

Of the AUTHORITY *to* PROSECUTE *or* DEFEND; *and of* PAUPERS, *and* INFANTS.

Entry of warrants of attorney, on what roll. *Prac.* 95. 734.

IT was anciently the course of the King's Bench, to enter the warrants of attorney to prosecute or defend on a particular roll, kept for that purpose[a]; but this course was altered in the time of *Wright*, Ch. J., who caused them to be entered on the top of the issue roll[b]. In the Common Pleas, they were formerly entered by the clerk of the warrants on distinct rolls, which were filed in the bundle of *common* rolls in that court. But, by a late rule of all the courts[c], "warrants of attorney to prosecute or defend shall not be "entered on distinct rolls, but on the top of the issue roll."

Pauper may be compelled to pay costs, for not proceeding to trial, though not dispaupered. *Prac.* 98. 759.

If a *pauper* give notice of trial, and do not proceed, or be otherwise guilty of improper conduct, the court will order him to be dispaupered[d]; and until this were done, they would not formerly have made any rule about costs[e]. But, by a late rule of all the courts[f], "where a pauper omits to proceed to trial, pursuant to notice, or "an undertaking, he may be called upon by a rule to shew cause, "why he should not pay costs, though he has not been dispaupered."

Effect of special admission of *prochein amy* or guardian for an infant. *Prac.* 100.

In the King's Bench, it was formerly considered, that a special admission of a guardian for an *infant* to appear in one cause, would serve for others[g]. But, by a late rule of all the courts[h], "a special "admission of *prochein amy* or guardian[i], to prosecute or defend "for an infant, shall not be deemed an authority to prosecute or "defend, in any but the particular action or actions specified."

[a] 1 Salk. 88.

[b] *Id. ibid.* R. E. 4 *Jac.* II. K. B.

[c] R. H. 2 W. IV. *reg.* I. § 1.

[d] *Prac.* 98. (*h.*)

[e] *Id.* (*i.*)

[f] R. H. 2 W. IV. *reg.* I. § 110.

[g] 1 Str. 305.

[h] R. H. 2 W. IV. *reg.* I. § 2.

[i] In the King's Bench, there is a rule drawn up, on a judge's *fiat*, for the admission of a *prochein amy*, or guardian: In the Common Pleas, there is no rule, but a judge's order only, for such admission.

CHAP. V.

Of the TERMS, *and* RETURNS *of* ORIGINAL WRITS, &c.

IT may not be deemed improper, in this Chapter, to make some observations on the *Terms*, and *returns* of original writs, &c. though they do not properly depend on rules of court, but are governed by the statutes 11 Geo. IV. & 1 W. IV. c. 70. § 6. and 1 W. IV. c. 3.

Terms, what, and when they formerly began and ended.

Prac. 105, 6, 7.

The *Terms* are those times or seasons of the year, which are set apart for the dispatch of business, in the superior courts of common law; and are called, from some festival or saint's day which formerly preceded their commencement, the terms of St. *Hilary*, of *Easter*, of the Holy *Trinity*, and of St. *Michael*. *Hilary* term formerly began on the octave of St. Hilary, or the eighth day inclusive after the feast day of that Saint, which falling on the 13th January, the octave therefore, or first day of Hilary term, was the 20th January; and it ended on the 12th February following, unless it happened on a Sunday, and then on the 13th February[a]: *Easter* term began in fifteen days of Easter, being the *Sunday* fortnight after that festival, and ended on *Monday* before Whit-Sunday. *Trinity* term which was abridged by the statute 32 Hen. VIII. c. 21, began on the morrow of the Holy Trinity, being the Monday next after Trinity Sunday, and ended on the *Wednesday* three weeks after, unless it happened on the 24th June, and then on the day following. *Michaelmas* term, which was abridged by the statute 16 *Car.* I. c. 6, and still further by the 24 Geo. II. c. 48, began (five weeks after *Michaelmas* day,) on the morrow of All Souls, being the 3d of November, and ended on the 28th of November following, if not a *Sunday*, otherwise on the 29th. Of these terms it may be observed, that *Michaelmas* and *Hilary* were *fixed* terms, and invariably began on the same day of the year; but *Easter* and

Fixed and moveable.

[a] In *Hilary* term, the first day of *full* term was the *twenty-third* of *January*, if not *Sunday*; and if *Sunday*, the next day after; and this term always began that day *eight* weeks, on which *Michaelmas* term ended, and ended *fourteen* weeks after *Michaelmas* term began. Man. Excheq. Append. 2.

Trinity terms were *moveable*, their commencement being regulated by the feast of *Easter*. In each of these terms, there were stated days called *essoign* or *general* return days[a], on which all *original* writs, and process thereon, must have been made returnable; in the King's Bench, *ubicunque*, &c. or wheresoever the king should then be in *England*[b], or, in the Common Pleas, before the king's justices at *Westminster*.

Essoign or general return days.

The duration of terms, and the essoign or general return days of original writs, &c., are now fixed and regulated by the statutes 11 Geo. IV. & 1 W. IV. c. 70[c], and 1 W. IV. c. 3. By the former of these statutes it is enacted, that "in the year of our Lord "1831, and afterwards, *Hilary* term shall begin on the *eleventh*, "and end on the *thirty-first* day of *January*; *Easter* term shall "begin on the *fifteenth* day of *April*, and end on the *eighth* day of "May; *Trinity* term shall begin on the *twenty-second* day of *May*, "and end on the *twelfth* day of *June*; and *Michaelmas* term shall "begin on the *second*, and end on the *twenty-fifth* day of *November*: "and that the essoign and general return days of each term shall, "until further provision be made by parliament, be as follows; "that is to say, the *first* essoign or general return day for every "term shall be the *fourth* day before the day of the commencement "of the term, both days being included in the computation; the "*second* essoign day shall be the *fifth* day of the term; the *third* "shall be the *fifteenth* day of the term; and the *fourth* and last "shall be the *nineteenth* day of the term, the first day of the term "being already included in the computation; with the same rela-"tion to the commencement of each term as they now bear, and "shall be distinguished by the day of the term on which they re-"spectively fall, the *Monday* being in all cases substituted for the "*Sunday*, when it shall happen that the day would fall on a *Sun-"day*, except always that in *Easter* term there shall be but *four* "returns instead of *five*, the last being omitted: Provided, that if "the whole or any number of the days intervening between the "*Thursday* before, and the *Wednesday* next after *Easter* day shall "fall within *Easter* term, there shall be no sittings in *banc* on "any of such intervening days, but the term shall in such case be "prolonged and continue for such number of days of business, as "shall be equal to the number of the intervening days before men-

Duration of terms, and essoign or general return days, now fixed and regulated by stat. 11 Geo. IV. & 1 W. IV. c. 70, and 1 W. IV. c. 3.

[a] For the essoign or general return days, before stat. 11 Geo. IV. & 1 W. IV. c. 70. § 6., see *Prac.* 106.

[b] Trye, 2. and see 1 Chit. R. 323.

[c] § 6.

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" tioned, exclusive of *Easter* day; and the commencement of the " ensuing *Trinity* term shall in such case be postponed, and its " continuance prolonged, for an equal number of days of business."

By the statute 1 W. IV. c. 3[a]. so much of the former act as relates to the appointment of *essoign* or *general* return days, is repealed; and it is thereby enacted[b], that " all writs usually return- " able before any of his majesty's courts of King's Bench, Com- " mon Pleas, or Exchequer respectively, on *general* return days, " may be made returnable on the third day exclusive before the " commencement of each term, or on any day, not being *Sunday*, " between that day and the *third* day exclusive before the last day " of the term; and the day for appearance shall, as heretofore, be " the third day after such return, exclusive of the day of the re- " turn; or in case such *third* day shall fall on a *Sunday*, then on " the *fourth* day after such return, exclusive of such day of re- " turn." And, in order to remove all doubts as to the duration of the terms, it is declared and enacted[c], that " in case the day of " the month on which any term, according to the former act, is to " *end*, shall be on a *Sunday*, then the *Monday* next after such day " shall be deemed and taken to be the last day of the term; and " that in case any of the days between the *Thursday* before, and " the *Wednesday* next after *Easter* shall fall within *Easter* term, " then such days shall be deemed and taken to be a part of such " term, although there shall be no sittings in *banc* on any of such " intervening days."

Beginning and ending of terms, on the above statutes.

Since the above statutes, *Hilary* term begins on the *eleventh*, and ends on the *thirty-first* day of *January*, unless that day fall on a *Sunday*, and then on the *Monday* following, being the *first* day of *February*: *Easter* term begins on the *fifteenth* day of *April*, and ends on the *eighth* day of *May*, unless that day fall on a *Sunday*, and then on the *Monday* following, being the *ninth* day of *May*; or unless the whole or some of the days intervening between the *Thursday* before, and the *Wednesday* next after *Easter* day, fall within *Easter* term, in which latter case the term is prolonged, and continues for such number of days of business, as are equal to the number of intervening days before mentioned, exclusive of *Easter* day; and if the last of the days to which it is so prolonged fall on a *Sunday*, then the term ends on the *Monday* following: *Trinity* term begins on the *twenty-second* day of *May*, and ends on the

[a] § 1. [b] § 2. [c] § 3.

twelfth day of *June*, unless that day fall on a *Sunday*, and then on the *Monday* following, being the *thirteenth* day of *June*; or unless *Easter* term be prolonged by such intervening days as before mentioned, in which latter case the commencement of *Trinity* term is postponed, and its continuance prolonged, for an equal number of days of business; and if the last day to which it is so prolonged fall on a *Sunday*, then the term ends on the *Monday* following: *Michaelmas* term begins on the *second*, and ends on the *twenty-fifth* day of *November*, unless the latter day fall on a *Sunday*, and then on the *Monday* following, being the *twenty-sixth* day of *November*. It is not said, in either of the above acts, on what day the term shall *begin*, in case the day appointed for its commencement happen on a *Sunday*; but it seems that in such case, the day so appointed must still in point of law, for the purpose of computation, be considered as the first day of the term; although, as the courts do not sit, an appearance cannot be entered, nor any judicial act done, or supposed to be done, till the *Monday*[a]: And, as *Sunday* is not considered at common law as a *dies juridicus*[b], writs cannot, when the first day of term falls on a *Sunday*, be made returnable till the *Monday* following[c].

Beginning of term, when day appointed for its commencement happens on *Sunday*.

The *first* essoign or general return day for *Hilary* term, is the *eighth* day of *January*; for *Easter* term, the *twelfth* day of *April*; for *Trinity* term, the *nineteenth* day of *May*, unless the commencement of that term be postponed, in consequence of such intervening days as before mentioned, and then the first essoign or general return day is the *third* day exclusive before the day to which its commencement is postponed; and for *Michaelmas* term, it is the *thirtieth* day of *October*. When the third day exclusive before the commencement of the term falls on a *Sunday*, it seems that writs may be made returnable thereon: And indeed it is observable, that before the late acts, the essoign or general return days of *Easter* term, except the last, were always, and those of *Michaelmas* and *Hilary* terms occasionally on *Sunday*. The essoign or general return days of each term, after the *first*, may be any day, not being *Sunday*, between the third day exclusive before the commencement, and the third day exclusive before the last day of the term[d]; but

Essoign or general return days, on the above statutes.

[a] Reg. Brev. 19. W. Jon. 156. 2 Salk. 626, 7. 6 Mod. 250. S. C. 3 Bur. 1596. 1 Blac. Rep. 496. 526. S. C. and see 1 Cromp. & J. 483. 1 Tyr. Rep. 499, 500. S. C.

[b] Co. Lit. 135. Com. Dig. tit. *Temps*, (B. 3).

[c] For a general Table of the Terms and Returns, see Append. § 2., and of the Terms and Returns for the present year, (1832) *id.* § 3.

[d] Stat. 1 W. IV. c. 3. § 2.

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the latter day, being it seems excluded by the language of the act, is not a good general return day: The *last* essoign or general return day therefore, of each term, is the *fourth* day exclusive before the last day of the term, unless that day happen on a *Sunday*, and then, *Sunday* being also excluded, the last essoign or general return day is the *Saturday* preceding [a]. The day for appearance, on writs usually returnable on general return days, is declared, by the statute 1 W. IV. c. 3. § 2, to be, as heretofore, the *third* day exclusive after the return day; or, in case such *third* day fall on a *Sunday*, then the *fourth* day after such return, exclusive of the day of return [b].

Appearance day.

Particular return days.

There is no mention made, in either of the above acts, of *particular* return days, or return days of process by *bill*, or attachment of privilege: Such process therefore may be made returnable, as before the acts, on any day of the term, not being *Sunday*, or *Ascension* day if it happen, as it may, in *Easter* or *Trinity* term [b]. And, with regard to the return days of writs in general, whether by *original*, or by *bill*, or attachment of privilege, it seems that in future it will be sufficient, in all cases, to describe them by the days of the month on which they happen; as "on the —— day of —— instant," (*or* "next.")

Return days of writs, how described.

Computation of time for appearing, and pleading, &c., and when days are reckoned exclusively or inclusively.

Prac. 238. 466.

In computing the time allowed by the practice of the courts, for appearing, and pleading, &c., the number of days, when not otherwise expressed, was in general reckoned *exclusively*, in actions by *bill* in the King's Bench, and *inclusively*, in actions by *original* in that court, or in the Common Pleas [c]. But, by a late general rule [d], signed by all the judges of the courts of King's Bench, Common Pleas, and Exchequer, (and which should be particularly attended to by Practitioners,) it is ordered, that "in "all cases in which any particular number of days, not expressed "to be clear days, is prescribed by the rules or practice of the "courts, the same shall be reckoned *exclusively* of the first day, and "*inclusively* of the last day, unless the last day shall happen to fall "on a *Sunday*, *Christmas day*, *Good Friday*, or a day appointed "for a public fast, or thanksgiving, in which case the time shall be "reckoned *exclusively* of that day also."

[a] Append. § 2.
[b] *Id.* § 2, 3.
[c] *Prac.* 238. 466.
[d] R. H. 2 W. IV. *reg.* VIII.

CHAP. VI.*

Of the PROCEEDINGS *in* ACTIONS *against* PEERS *of the* REALM, *and* MEMBERS *of the* HOUSE *of* COMMONS; *and against* CORPORATIONS, *and* HUNDREDORS.

* There are no new rules affecting the contents of this Chapter: But a bill has been brought in by Lord *Tenterden*, and is now depending in Parliament, for uniformity of process in *personal* actions, in his Majesty's courts of Law at *Westminster*; by which the commencement of *personal* actions in general, and the process therein, and particularly in actions against Peers of the Realm, and Members of the House of Commons, Corporations and Hundredors, and also by and against attornies, and against prisoners in the custody of the Marshal of the King's Bench, or Warden of the Fleet prison, will be materially altered.

CHAP. VII.

Of the CAPIAS *by* ORIGINAL, *and* PROCESS *of* OUTLAWRY.

IN the Common Pleas, there was an old rule of court [a], that "no *exigenter* should receive any *pluries capias*, in order to make an *exigent* or proclamation thereon, before the same was signed or stamped by the clerk of the warrants, or his deputy, to the end it might thereby appear, that the warrants of attorney therein were duly filed." But, by a late rule of all the courts [b], "it shall not "be necessary that a *pluries capias* be stamped by the clerk of the "warrants, to authorize the *exigenter* to make out an *exigent*."

Pluries capias need not be stamped by clerk of warrants. *Prac.* 96. 182.

[a] R. H. 2 & 3 *Jac.* II. C. P., and see R. H. 14 & 15 *Car.* II. *reg.* II. C. P.

[b] R. H. 2 W. IV. *reg.* I. § 94.

CHAP. VIII.

Of MESNE PROCESS.

Effect of describing defendant, in bailable process, by *initials*, or wrong name, &c.

Prac. 148. 304. 447, 8.

A BILL of *Middlesex*, and notice thereto, describing the defendant as Mr. *A.*, without stating his christian name, has been deemed irregular [a]: And, in the King's Bench, where the party arrested was described in the process, and affidavit to hold to bail, by the *initials* of his christian name only, the court ordered the bail-bond to be delivered up to be cancelled, and the defendant discharged, upon entering a common appearance [b]: And, in that court, where the christian name of the defendant was omitted in a bailable *latitat*, the court, on motion, would have set it aside for irregularity; but where it was omitted in *serviceable* process, they would leave the party to his plea in abatement [c]. So, in the Common Pleas, if a defendant were arrested by the *initials* of his christian name only, and signed a bail-bond in a similar manner, the court would have discharged him, on entering a common appearance, on his undertaking to bring no action [d]. But, by a late rule of all the courts [e], "where "the defendant is described in the process, or affidavit to hold to "bail, by *initials*, or by a wrong name, or without a *christian* name, "the defendant shall not be discharged out of custody, or the bail-"bond delivered up to be cancelled, on motion for that purpose, if "it shall appear to the court, that due diligence has been used to "obtain knowledge of the proper name." [f]

Joining several defendants, for distinct causes of

The plaintiff was formerly allowed to join *four* defendants, for separate causes of action, in one writ, and to declare against them

[a] 1 Chit. R. 398. (*a.*)

[b] 4 Barn. & Ald. 536., and see 2 Dowl. & R. 73. 237.

[c] 6 Barn. & C. 165.

[d] 6 Moore, 264.

[e] R. H. 2 W. IV. *reg.* I. § 32.

[f] For the form of an affidavit to account for plaintiff's suing defendant by an *initial*, or wrong name, see Chit. Pr. *Addend.* 13. (32.)

severally [a]; and this is still allowed in the Common Pleas [b], and Exchequer, when the process is not bailable: But, in the King's Bench, by a late rule of court [c], "in all actions by *bill*, the mesne process shall contain the name of the defendant, or, if more than one, of all the defendants in that action; and shall not contain the name or names of the defendant or defendants in any other action." A plaintiff however, in the King's Bench, may, notwithstanding this rule, sue out his writ against two defendants, and declare against one only, dropping his proceedings against the other entirely [d]: And, in the Exchequer, where a *quo minus* had been issued against one defendant, and a *venire* against another, neither writ being bailable, the court held, that the plaintiff might declare jointly against both of them [e]. There is also a rule, in the latter court [f], that "where there are more than *four* defendants in a joint action "to be commenced in that court, residing in the same county, "the whole number of such defendants shall be named in one "writ."

action, in one writ. *Prac.* 148, 9.

Joining more than four defendants in one writ, in Exchequer. *Prac.* 148, 9.

By the statute 13 *Car.* II. stat. 2. c. 2. § 2, it was enacted, that "no person arrested by any sheriff, &c., by force or colour of any "bailable writ, bill or process, issuing out of the King's Bench, "wherein the certainty and true cause of action is not expressed "particularly, shall be compelled to give security for his appear-"ance, in any penalty or sum exceeding *forty* pounds." But, notwithstanding this statute, the defendant might still be arrested and holden to special bail, upon a common bill of *Middlesex*, or *latitat*, &c., in the King's Bench, or upon a common writ of *capias quare clausum fregit* in the Common Pleas, without an *ac etiam*, for any sum not exceeding 40*l.* [g] And, by a late rule of all the courts [h], "the want of an *ac etiam*, where the defendant is arrested, shall "not be deemed ground for discharging the defendant, or the bail; "but the bail-bond, or recognizance of bail, shall be taken with a "penalty or sum of *forty* pounds only."

Effect of want of *ac etiam*, in bailable process. *Prac.* 150. 153.

[a] Com. Rep. 74. 4 Durnf. & E. 696., and see *id.* 697. 1 Maule & S. 55.

[b] 1 Bos. & P. 19. 49.

[c] R. E. 8 Geo. IV. K. B. 6 Barn. & C. 639. 9 Dowl. & R. 677.

[d] 2 Man. & R. 367.

[e] 1 Tyr. Rep. 303.

[f] R. M. 1 W. IV. *reg.* II. § 3. 1 Cromp. & J. 275. 1 Tyr. Rep. 158., and see *id.* 303. (*c.*)

[g] 1 H. Blac. 310., and see 10 Barn. & C. 813.

[h] R. H. 2 W. IV. *reg.* I. § 10.

Service of *subpœna*, in Exchequer.
Prac. 156. 167, 8.

In the Exchequer of Pleas, it was formerly deemed sufficient to serve a *label*, or *minute* of the *subpœna*, on the defendant, specifying the day of appearance: But, by a late rule of that court [a], "a copy "of all process of *subpœna ad respondendum*, thereafter to be is- "sued out of that court, and of any indorsement thereon, shall be "served; and no service thereof shall be effected, as theretofore, "by service of any *label* or other *minute* thereof."

Arrest not allowed in Exchequer, upon writ of attachment, unless for bailable cause of action.
Prac. 157. 178.

Instances having occurred, since the statute 7 & 8 Geo. IV. c. 71, in which, upon proceedings in the court of Exchequer, by way of *subpœna* and attachment, defendants had been arrested upon writs of attachment, notwithstanding the same had not issued for a bailable cause of action, and it being desirable that such practice should be discontinued; a rule was made in that court [b], that "no "arrest shall be made upon any such writ of attachment, unless the "same shall be for a bailable cause of action, and shall be duly "marked and indorsed for bail."

Præcipe, and indorsement of attorney's name, on process in Exchequer.
Prac. 157.

There is also a rule, in the Exchequer of Pleas [c], that "the name "and address of the attorney issuing any writ shall be indorsed or "written thereon; and also that the day, month and year, in which "the same shall be issued, shall be indorsed or written on all writs "to be issued in the office of Pleas of this court; and if the same "be *mesne* process, other than a writ of *subpœna ad respondendum*, "a *præcipe*, or particular of such writ, containing the county into "which the same shall issue, the names of every party, plaintiff "and defendant, therein, the time of the return thereof, the name "and address of the attorney issuing the same, and the day of the "date on which the same shall be so issued, shall be delivered to the "clerk, or deputy clerk of the Pleas, on his being required to sign "such writ; which *præcipe* shall be duly filed, on files to be pro- "vided by the said clerk of the Pleas, or his deputy, for each term "and vacation, according to the county into which the same shall be "issued: and if such process be *subpœna ad respondendum*, and "process of contempt thereon, and writ of *supersedeas* thereon, a

[a] R. M. 1 W. IV. *reg.* II. § 2. 1 Cromp. & J. 275. 1 Tyr. Rep. 188.

[b] R. T. 1 W. IV. 1 Cromp. & J. 468, 9. 1 Tyr. Rep. 519. Price Ex. Pr. 490, 91. And for observations thereon, see *id.* 491, &c.

[c] R. M. 1 W. IV. *reg.* II. § 1. 1 Cromp. & J. 274, 5. 1 Tyr. Rep. 157, 8.

" *præcipe* shall in like manner be left with the sworn or side clerks, " or their deputies, in the office of Pleas, containing the names of " every party, plaintiff and defendant, therein, the time of the return " thereof, the name and address of the attorney issuing the same, " and the day of the date on which the same shall be issued; which " shall be kept on a similar file, by the sworn and side clerks; to " which *præcipes* any attorney of this court, or his clerk, shall have " access, on payment of the fee payable in respect thereof." The former part of this rule, which requires the day of the month and year to be indorsed on the process, has been holden to be merely *directory;* and the court of Exchequer, in a late case [a], would not set aside the service of process, because there was no such indorsement upon it.

Amount of debt and costs to be indorsed on process. *Prac.* 160.

To ascertain the amount of debt and costs claimed by the plaintiff, and to give the defendant an opportunity of paying them in the first instance, it is ordered, by a late rule of all the courts [b], that " upon every bailable writ and warrant, and upon the copy of any " process served for the payment of any debt, the amount of the " debt shall be stated, and the amount of what the plaintiff's attorney " claims for the costs of such writ or process, arrest, or copy and " service, and attendance to receive debt and costs [c]; and that, upon " payment thereof, within *four* days, to the plaintiff or his attorney, " further proceedings will be stayed: but the defendant shall be at " liberty, notwithstanding such payment, to have the costs taxed; " and if more than one *sixth* shall be disallowed, the plaintiff's at- " torney shall pay the costs of taxation." [d]

Setting aside process for irregularity. *Prac.* 160, 61. 513.

A party cannot take advantage of any error or defect in the process, after he has appeared to it [e], or taken the declaration out of

[a] 1 Cromp. & J. 563., and see 2 Crothp. & J. 93. but see Chit. Pr. *Addend.* 32. (II.)

[b] R. H. 2 W. IV. *reg.* II.

[c] Append. § 4.

[d] It seems from the authorities referred to in the *Addenda* to Mr. *Chitty's* very useful and valuable *Summary* of the Practice of the Courts, p. 32. (II.) that this rule would be construed as *imperative* on the plaintiff, and not merely *directory;* and consequently that the omission to comply with it would be deemed an irregularity, for which the court would set aside the proceedings. *Sed quære;* and see 1 Cromp. & J. 563. 2 Cromp. & J. 93. *Supra.*

[e] 1 Str. 155. Barnes, 163. 167. 415. 1 Bos. & P. 250. 344.

CHAP. VIII.

the office [a], or obtained time to put in bail to the action [b]; for it is the universal practice of the courts, that the application to set aside process for irregularity, should be made as early as possible, or, as it is commonly said, in the first instance [c]: And accordingly, by a late rule of all the courts [d], "no application to set aside pro-"cess for irregularity, shall be allowed, unless made within a rea-"sonable time; nor if the party applying has taken a fresh step, "after knowledge of the irregularity."

[a] Cas. *temp.* Hardw. 242. 2 Str. 1072, 3. Barnes, 416. 1 H. Blac. 222, 3.

[b] 6 Barn. & C. 76. 9 Dowl. & R. 124. S. C.

[c] 3 Durnf. & E. 7. 1 East, 334, 5. 8 Dowl. & R. 450. 9 Price, 637.

[d] R. H. 2 W. IV. *reg.* I. § 33.

CHAP. X.

Of a SECOND ARREST, *after* NON PROS, &c.; *and of the* AFFIDAVIT TO HOLD TO BAIL.

Second arrest, after *non pros*, *nonsuit*, or *discontinuance*. *Prac.* 175.

THE rule for preventing vexatious arrests, was formerly so rigidly adhered to, that where the plaintiff was *nonprossed* for want of a declaration, he could not afterwards have arrested the defendant, in a second action, for the same cause [a]; and this practice still prevailed in the Common Pleas [b]: but, in the King's Bench, it was determined, that after a *non pros*, the defendant should find bail in the second action [c]; for the plaintiff, it was said, suffered enough by paying costs in the first action, and therefore ought not to be in a worse situation than before. So, if the plaintiff were *nonsuited*, in an action of *debt* on bond, for not sufficiently proving the execution

[a] 1 Ld. Raym. 679. Com. Rep. 94. S. C.

[b] 3 Moore, 607. 1 Brod. & B. 289. S. C. 4 Moore, 294. 1 Brod. & B. 514. S. C.

[c] 1 Str. 489.

of it on *non est factum*[a]; or on the ground of a variance in a former action, in which the defendant was arrested[b], he might formerly have been arrested again, in a second action, for the same cause: But this was not allowed after a nonsuit on the merits[c]. And where the plaintiff, having misconceived his action, moved to *discontinue* upon payment of costs, he might, after the costs were taxed and paid[d], have taken out a new writ for the same cause, and had the defendant arrested *de novo*[e]. But now, by a late rule of all the courts[f], "after *non pros*, nonsuit, or discontinuance, the de- "fendant shall not be arrested a second time, without the order of "a judge."

Inserting deponent's addition, in affidavit to hold to bail. *Prac.* 179.

In the King's Bench, by an old rule of court[g], "the true place of abode, and the true addition of every person making an affidavit in this court, shall be inserted in such affidavit:" But there being no such rule in the Common Pleas[h], it was ordered, by a late rule of all the courts[i], that "the addition of every person making an "affidavit, shall be inserted therein."

Title of affidavit to hold to bail. *Prac.* 180, 81. 492.

It was determined in one case[k], to be no objection to an affidavit to hold to bail, that it was not entitled "In the King's Bench": In a subsequent case however, it was holden, that an affidavit of debt not entitled in any court, and only subscribed with the words "By the Court", at the bottom of the *jurat*, was not sufficient[l]. But it is now settled, by a late rule of all the courts[m], that "an "affidavit sworn before a judge of any of the courts of King's "Bench, Common Pleas, or Exchequer, shall be received in the "court to which such judge belongs, though not entitled of that "court; but not in any other court, unless entitled of the court in "which it is to be used."

[a] Barnes, 73.
[b] 1 Chit. R. 273.
[c] *Per Cur.* E. 19 Geo. III. K. B.
[d] 2 Str. 1209. 3 Maule & S. 153. 5 Barn. & Ald. 905. 1 Dowl. & R. 556. S. C. 7 Moore, 312.
[e] 2 Wils. 381. Barnes, 399.
[f] R. H. 2 W. IV. *reg.* I. § 7.
[g] R. M. 15 *Car.* II. *reg.* I. K. B.
[h] 6 Taunt. 73.
[i] R. H. 2 W. IV. *reg.* I. § 5.
[k] 7 Durnf. & E. 451.
[l] 3 Maule & S. 157.
[m] R. H. 2 W. IV. *reg.* I. § 4.

Affidavit to hold to bail, for money paid, &c.

Prac. 184.

It was formerly holden, in the Common Pleas, that in an affidavit of debt, for money paid to the use of the defendant [a], or for work and labour as the defendant's servant [b], it was not necessary to state that it was *at his request;* but it was otherwise in the King's Bench [c]: And now, by a late rule of all the courts [d], "affidavits "to hold to bail, for money paid to the use of the defendant, or for "work and labour done, shall not be deemed sufficient, unless they "state the money to have been paid, or the work and labour to have "been done, at the request of the defendant."

Supplemental affidavit to hold to bail.

Prac. 189.

In the King's Bench, it is the constant and uniform practice of the court, not to receive a *supplemental* affidavit to hold to bail [e]. In the Common Pleas, however, where the affidavit to hold to bail was defective, by reason of the omission of some circumstance necessary to complete it, as where it was not sworn, in an affidavit made by an *executor*, that he believed the debt to be due [f], or that the defendant acknowledged an account stated [g], &c., the court would formerly have permitted the deficiency to be supplied by a *supplemental* affidavit: But now, by a late rule of all the courts [h], "no *supplemental* affidavit shall be allowed, to supply any deficiency "in the affidavit to hold to bail."

[a] 5 Taunt. 704. 751. 1 Marsh. 315. S. C. 8 Moore, 332. 1 Bing. 338. S. C.

[b] 5 Taunt. 756. 1 Marsh. 317. (*a.*) S. C. 6 Taunt. 389.; and see 11 Moore, 383.

[c] 5 Maule & S. 446. 8 Barn. & C. 654. 3 Man. & R. 129. S. C.

[d] R. H. 2 W. IV. *reg.* I. § 8.

[e] *Prac.* 189. (*d.*)

[f] 2 Blac. Rep. 850.

[g] Barnes, 100.; and see *id.* 87. 1 H. Blac. 248. 1 Bos. & P. 36. 228. 2 Bos. & P. 110. 298.

[h] R. H. 2 W. IV. *reg.* I. § 9.

CHAP. XII.

Of APPEARANCE, *and* SPECIAL BAIL.

Time for entering appearance, in actions by *original*.
Prac. 238.

IN actions by *original*, in the King's Bench, the defendant should formerly have entered his appearance, upon a summons, attachment, or *distringas*, on or before the *quarto die post* of the return of the writ[a]: So, in the Common Pleas, the appearance must have been entered within *four* days after the return; which were reckoned *inclusive* both of the return day and *quarto die post*[b]. But, by a late rule of all the courts[c], "a defendant who has been served with "process by *original*, shall enter an appearance within *four* days of "the appearance day, if the action is brought in *London* or *Middle-*"*sex*, or within *eight* days of the appearance day, in other cases; "otherwise the plaintiff may enter an appearance for him, ac-"cording to the statute: and any attorney who undertakes to ap-"pear, shall enter an appearance accordingly."

Affidavit of service of process.
Prac. 242.

In the King's Bench, the affidavit of service of process could not formerly have been taken before a commissioner, who was concerned as attorney for the plaintiff: In the Common Pleas, it was otherwise[d]. But, by a late rule of all the courts[e], "no affidavit of "the service of process shall be deemed sufficient, if made before the "plaintiff's own attorney, or his clerk."

Joinder of more than four defendants, in one appearance, in Exchequer.
Prac. 243.

In the Exchequer of Pleas it is a rule, that "where there are "more than *four* defendants in a joint action, to be commenced in "that court, residing in the same county, if the whole number of "defendants shall appear by the same attorney, and at the same "time, the names of all the defendants shall be inserted in one

[a] Trye, 67, 8.
[b] 1 H. Blac. 9.
[c] R. H. 2 W. IV. *reg.* I. § 31.
[d] R. E. 13 Geo. II. *reg.* I. C. P.
[e] R. H. 2 W. IV. *reg.* I. § 3.

CHAP. XII. "appearance." [a] And, in that court, where the plaintiff having sued out a writ of *quo minus* against one defendant, and a *venire* against the other, and, separate appearances having been entered, and separate rules to declare given, declared jointly against both, the court held that the declaration was regular [b].

Form of entry of appearance, in Exchequer. *Prac.* 243.

There is also a rule, in the Exchequer of Pleas [c], that "on every "appearance to be entered by the sworn or side clerks, as officers of "the office of pleas, they shall cause to be put the name and address "of the attorney at whose instance, and the day on which the "same shall be entered; and such appearance shall be entered by "the defendant's name, by the said sworn clerks, in proper books, "having an alphabetical index book of reference, entered by the "plaintiff's name, to be provided by the clerk of the pleas for each "term; which books shall be open to the inspection of the said at-"tornies, and their clerks, without fee or reward."

Number of bail. *Prac.* 245.

In general there are *two* special bail only, in civil cases; though, in the King's Bench [d], and Exchequer [e], where the debt was large, the court would formerly have allowed *three* or *four* persons to become bail in different sums, amounting altogether to the requisite sum: The usual course in such case was, to apply to the court for leave to justify a greater number of persons than *two* as bail [f]; and having drawn up the rule, to serve it on the plaintiff's attorney or agent, at the same time as the notice of justification [g]. And, by a late rule of all the courts [h], "notice of more bail than *two* shall be "deemed irregular, unless by order of the court or a judge."

Practising attorney, or clerk, not allowed to be bail. *Prac.* 247.

It is a rule, in the King's Bench and Common Pleas, that no *attorney* shall be bail, in any action pending therein [i]. This rule,

[a] R. M. 1 W. IV. *reg.* II. § 3. 1 Cromp. & J. 275. 1 Tyr. Rep. 158.

[b] 1 Cromp. & J. 388. 1 Tyr. Rep. 303. S. C.

[c] R. M. 1 W. IV. *reg.* II. § 5. 1 Cromp. & J. 276, 7. 1 Tyr. Rep. 59.

[d] Lofft, 26. 252. 1 Chit. R. 601.

[e] Forrest, 138. Wightw. 110.

[f] For the form of a summons for leave to put in more than *two* bail, see Append. § 5; and for an affidavit of facts for that purpose, see Chit. Pr. Append. 319.

[g] Easter v. Edwards, E. 1831. *per* Master *Le Blanc.*

[h] R. H. 2 W. IV. *reg.* I. § 18.

[i] R. M. 1654. § 1. R. M. 14 Geo. II. *reg.* I. K. B. R. T. 24 Eliz. § 8. R. M. 1654. § 1. R. M. 6 Geo. II. *reg.* v. C. P. 1 Chit. R. 8.

which was calculated for the benefit of attornies, and intended to protect them against the importunity of their clients, has been extended to their clerks [a]: And, by a late rule of all the courts [b], "if any person put in as bail to the action, except for the purpose "of rendering only, be a practising attorney, or clerk to a prac- "tising attorney, the plaintiff may treat the bail as a nullity, and "sue upon the bail-bond, as soon as the time for putting in bail has "expired, unless good bail be duly put in in the mean time."

Recognizance, and notice of bail, &c. in Exchequer. *Prac.* 251.

In the Exchequer of Pleas, by a late rule [c], "all recognizances of "bail, in actions in the office of pleas, when taken or allowed by a "baron, shall be left by the attorney for the defendant or defend- "ants, with the sworn or side clerks, or their deputy, in the office "of pleas, until duly allowed; who shall enter the same in a book "to be kept by them for that purpose, having an alphabetical index "of reference; which book shall be open to the inspection of the "attornies, or their clerks: And notice of such bail being allowed, "and left and filed in the said office of pleas, with the names, de- "scriptions and address of the bail, shall be given by the attorney for "the defendant or defendants, to the attorney for the plaintiff or "plaintiffs, within the times prescribed for giving notice of bail by "the former rules of this court; and proceedings may be thereupon "had, for excepting to and perfecting such bail, within the times "and in like manner as is and are prescribed by the existing rules "and practice of this court, except so far as the same may be al- "tered by that or any subsequent rule of this court."

Time for transmitting and filing bail-piece, when taken in country. *Prac.* 252.

In the case of *country* bail, the rules of court formerly required the bail-piece to be transmitted to the chief-justice, or other judge of the court of King's Bench, in *eight* days, if taken within *forty* miles of *London* or *Westminster*, or, if taken above that distance, in *fifteen* days after the taking thereof [d]; and, in the Common Pleas, the bail, if taken within *forty* miles of *London*, were to be transmitted within *ten* days, or, if taken above that distance, within *twenty* days after the taking thereof [e], unless all the judges were on their circuits, and then as soon as any one of them was returned: But it was said that, notwithstanding these rules, the bail-piece must

[a] *Prac.* 247. (*g.*)
[b] R. H. 2 W. IV. *reg.* I. § 13.
[c] R. M. 1 W. IV. *reg.* II. § 4. 1 Cromp. & J. 275. 1 Tyr. Rep. 158.
[d] R. T. 8 W. III. *reg.* III. § 3. K. B.
[e] R. 10 *Mar.* 5 W. & M. § 3. C. P.

CHAP. XII. actually have been filed with one of the judges, on the *sixth* day after the return of the writ in the King's Bench, or *eighth* day in the Common Pleas, or the bail-bond might be assigned [a]. And, by a late rule of all the courts [b], "in the case of *country* bail, the bail-"piece shall be transmitted and filed within *eight* days, unless the "defendant reside more than *forty* miles from *London*; and in that "case, within *fifteen* days after the taking thereof."

Notice of bail. *Prac.* 254.

It was not formerly deemed necessary to mention, in the notice of bail, the *number* of the house, in the street in which they were stated to reside [c]; though, when mentioned therein, a mistake of the number was a ground of rejection [d]: But now, by a late rule of all the courts [e], "every notice of bail shall, in addition to the de-"scriptions of the bail, mention the street or place, and number if "any, where each of the bail resides, and all the streets or places, "and numbers if any, in which each of them has been resident, at "any time within the last *six* months, and whether he is a house-"keeper or freeholder." [f] On this rule, it has been decided in the Exchequer, that is not necessary to state, in the notice of bail, that the bail have resided, for the last *six* months, at the places of residence described in the notice [g]; though it is said to have been otherwise decided in the King's Bench [h].

When accompanied by affidavit of justification. *Prac.* 255.

The notice of bail may be, and is sometimes accompanied by an affidavit of justification of each of the bail, according to the form subjoined to a late rule [i]; and if such affidavits be made, they should be referred to in the notice of bail, [k] and copies of them delivered therewith to the plaintiff's attorney; and in that case, the plaintiff, by the above rule, must give *one* day's notice of exception [l], in order to compel them to justify.

Bail may be excepted to, after assignment of bail-bond. *Prac.* 255. 306.

When the bail to the sheriff became bail above, the plaintiff, in the

[a] Imp. K. B. 10 Ed. 137. Imp. C. P. 7 Ed. 129, 30.

[b] R. H. 2 W. IV. *reg.* I. § 14.

[c] Anon. H. 1831. *per Parke*, J.

[d] *Per Cur.* H. 55 Geo. III. K. B. 1 Chit. R. 493. *in notis.*

[e] R. T. 1 W. IV. *reg.* I. § 2. 7 Bing. 782. 1 Cromp. & J. 470.

[f] Append. § 6, 7, 8.

[g] 2 Cromp. & J. 54, 5. *per Bayley*, B.

[h] *Per Littledale*, J. *id.* 55. (*a.*)

[i] R. T. 1 W. IV. *reg.* I. § 3. 7 Bing. 783. 1 Cromp. & J. 470.

[k] Append. § 9., and see Chit. Pr. 325, 6.

[l] Append. § 10.

King's Bench, was not formerly at liberty to except to them, after he had taken an assignment of the bail-bond [a]; for by so doing, he admitted them to be sufficient: but if exception were taken to the bail *before* the bond was assigned, they were bound to justify, notwithstanding such assignment [b]. In the Common Pleas, however, it was a rule [c], that "in all cases wherein bail-bonds should be taken, and the same bail was put in above, the plaintiff might except against such bail:" And now, by a late rule of all the courts [d], "when bail to the sheriff become bail to the action, the plaintiff may "except to them, though he has taken an assignment of the bail-"bond."

Changing bail. *Prac.* 258.

Formerly, when the bail put in did not mean to justify, others might have been *added*, as a matter of course, within the time allowed for their justification; and if there were not time enough, the defendant's attorney might have taken out a summons, and obtained an order for further time [e]: But now, by a late rule of all the courts [f], "the bail, of whom notice shall be given, shall not "be changed, without leave of the court or a judge." [g] On this rule, if it be necessary, application may be made to the court or a judge, on an affidavit of the circumstances [h], for leave to add, and time to justify bail: And, in a late case, where the agent for the defendant had not time to communicate with his principal in the country, so as to obtain the names of good bail, the court of Exchequer allowed the bail to be changed, upon payment of costs, and putting the

[a] 1 Salk. 97. 7 Mod. 62. 117. 6 Mod. 122. R. M. 8 Ann *reg.* I. (*c.*) R. E. 5 Geo. II. *reg.* I. (*a.*) K. B.

[b] 11 East, 321.

[c] R. M. 6 Geo. II. *reg.* II. C. P. Barnes, 63. 2 Wils. 6.

[d] R. H. 2 W. IV. *reg.* I. § 15.

[e] 1 Cromp. Pr. 3 Ed. 62. 84, &c.

[f] R. T. 1 W. IV. *reg.* I. § 5. 7 Bing. 783. 1 Cromp. & J. 470.

[g] Previously to the above rule, a disgraceful practice had prevailed of putting in *nominal* or *sham* bail, in the first instance, who were *hired* for the purpose, and when they were excepted to, of adding and justifying *real* bail, which was allowed as a matter of course, without any cause being assigned for it; but this practice is now abolished. For the form of a summons for leave to add one or more bail, on the above rule, see Append. § 11.; and for the judge's or baron's order thereon, *id.* § 12. For an affidavit in support of such summons and order, see Chit. Pr. 329, 30.; and for notices of adding and justifying bail, by previous leave of a judge or baron, see Append. § 13, 14.

[h] For affidavits to obtain further time to justify, or add and justify bail, see Chit. Pr. Append. 336, &c.

CHAP. XII. plaintiff in the same situation, as if good bail had been put in in the first instance [a].

Putting in and justifying bail, at same time.
Prac. 259.

Previously to a late rule [b], bail could not in general have justified, unless by consent, or in the case of *prisoners*, at the same time as they were put in; and therefore, when *real* bail were put in, they had the trouble of attending twice, if excepted to, at different times and places, first, at the judge's chambers, when they were put in, and afterwards in court, to justify [c]: But now, by the above rule, "a "defendant may justify bail at the same time at which they are put "in, upon giving *four* days' notice for that purpose [d], before *eleven* "o'clock in the morning, and exclusive of *Sunday;* and if the plain- "tiff is desirous of time to inquire after the bail, and shall give *one* "day's notice thereof [e] as aforesaid, to the defendant, his attorney "or agent, as the case may be, before the time appointed for justi- "fication, stating therein what further time is required, such time "not to exceed *three* days in the case of *town* bail, and *six* days in "the case of *country* bail, then (unless the court or a judge shall "otherwise order,) the time for putting in and justifying bail shall "be postponed accordingly; and all proceedings shall be stayed in "the mean time." This rule, however, is not compulsory on the defendant, to justify bail at the time of putting them in; but he may still proceed, as formerly, by putting in bail before a judge, and waiting till they are excepted to, before justification, and then justifying them, on their personal attendance in open court, or before a judge or baron at his chambers. On this rule, a notice that bail will be put in and justify at the same time, must be a *four* days' notice, exclusive of *Sunday;* and must be served before *eleven* o'clock in the forenoon [f].

Notice of justification, when given.
Prac. 259, 60.

In the King's Bench, where the bail already put in intended to justify, *one* day's previous notice of justification, or notice for the next day, was formerly deemed sufficient [g], unless *Sunday* intervened, and then notice must have been given on *Saturday* for *Monday*: But where other bail were added to those already put

[a] 2 Cromp. & J. 54.
[b] R. T. 1 W. IV. *reg.* I. § 1. 7 Bing. 782. 1 Cromp. & J. 469.
[c] Chit. Pr. 50.
[d] Append. § 15.
[e] *Id.* § 16.
[f] 2 Cromp. & J. 124.
[g] Wright v. Ley, H. 15 Geo. III. K. B.

in, there must have been *two* days' previous notice of justification, one *inclusive* and the other *exclusive*, as *Monday* for *Wednesday*[a]; or, if *Sunday* intervened, *Saturday* for *Tuesday*, &c. In the Common Pleas, *two* days' notice of justification must formerly have been given, as well where the bail already put in intended to justify, as in the case of added bail[b]; and *Sunday* was not reckoned a day for this purpose: therefore notice of added bail on *Saturday* for *Monday*, was not deemed sufficient[c]. And now, by a late rule of all the courts[d], "it shall be sufficient in all cases, if notice of justifi- "cation of bail be given *two* days before the time of justification."

When put in and excepted to in vacation.

When bail above are put in, and exception entered in *vacation*, the defendant's attorney, in the King's Bench[e] and Exchequer[f], must formerly have given notice, within *four* days after the exception, of justification of the same bail, for the *first* day of the next term; or the plaintiff might have taken an assignment of the bail-bond[g]. In the Common Pleas, notice of justification might have been given at any time in vacation, so as there were *two* days' notice before the *first* day of the next term[h]. And now, by a late rule of all the courts[i], "if bail to the action are excepted to in va- "*cation*, and the notice of exception require them to justify before "a judge, the bail shall justify within *four* days from the time of "such notice, otherwise on the *first* day of the ensuing term."

Prac. 260.

Affidavit of justification, on R. T. 1 W. IV.

The justification of bail is either in *person* or by *affidavit*. By a late rule of all the courts[k], "if the notice of bail shall be ac- "companied by an affidavit of each of the bail, according to the "form thereto subjoined[l], and the plaintiff shall not give *one* day's "notice of exception[m] to the bail, by whom such affidavit shall have "been made, the recognizance of such bail may be taken out of "court, without other justification than such affidavit." By a subsequent rule of all the courts[n], (which seems to extend to affidavits of justification of *country*, as well as *town* bail,) "affidavits

On R. H. 2 W. IV. *reg.* I. § 19.

[a] *Per Cur.* M. 21 Geo. III. K. B. 9 East, 435. 1 Chit. R. 308.

[b] Barnes, 82. 88. 2 Bos. & P. 30. 1 Marsh. 322.

[c] Barnes, 303.

[d] R. H. 2 W. IV. *reg.* I. § 16.

[e] 9 East, 434.

[f] Man. Ex. Pr. 103.

[g] 9 East, 434.

[h] Barnes, 101.

[i] R. H. 2 W. IV. *reg.* I. § 17.

[k] R. T. 1 W. IV. *reg.* I. § 3, 4. 7 Bing. 783. 1 Cromp. & J. 470.

[l] Append. § 17.

[m] *Id.* § 10.

[n] R. H. 2 W. IV. *reg.* I, § 19.

CHAP. XII. "of justification shall be deemed insufficient, unless they state that "each person justifying is worth the amount required by the prac- "tice of the courts, over and above what will pay his just "debts, and over and above every other sum for which he is then "bail."

Justification in court, or at chambers.

Prac. 264.

In Exchequer.

By the late act for the more effectual administration of justice in *England* and *Wales* [a], "bail may be justified before a judge in "chambers, or in some other convenient place to be by him ap- "pointed, as well in term as in vacation, and whether the defendant "be actually in custody or not." [b] Agreeably to this statute, a rule was made in the Exchequer [c], that "all special bail shall be justified, within *four* days after exception, before a baron at chambers, as well in term as in vacation." But, by a subsequent rule of that court [d], "justification of bail in term time, shall, unless by "consent, take place, as heretofore, in open court; and the justi- "fication of bail before a baron at chambers, shall be confined to "cases of consent, and to justification in vacation."

Costs of justifying, or opposing bail.

Prac. 271.

By a late rule of all the courts [e], "if the notice of bail be accom- "panied by an affidavit of justification of each of the bail, according "to the form thereto subjoined, and the plaintiff afterwards except to "such bail, he shall, if such bail are allowed, pay the costs of justifi- "cation; and if they are rejected, the defendant shall pay the costs of "opposition, unless the court, or a judge thereof, shall otherwise "order." [f] But if the defendant give a second, or amended notice of bail, after a first accompanied by affidavits of justification, the second notice must also, it seems, be accompanied by such affidavits, to entitle him to the costs of an unsuccessful opposition [g].

Liability of bail.

Prac. 280, 81.

In the King's Bench, where the plaintiff declared for or recovered a *greater* sum than was expressed in the process upon which he de-

[a] 11 Geo. IV. & 1 W. IV. c. 70. § 12.

[b] For the form of notice of justification by same bail, in court, see Append. § 18.; and by bail at chambers, on stat. 11 Geo. IV. & 1 W. IV. c. 70. § 12., Append. § 19.

[c] R. M. 1 W. IV. *reg.* II. § 16. 1 Cromp. & J. 281. 1 Tyr. Rep. 163.

[d] R. H. 1 W. IV. 1 Cromp. & J. 385. 1 Tyr. Rep. 291.

[e] R. T. 1 W. IV. *reg.* I. § 3. 7 Bing. 783. 1 Cromp. & J. 470.

[f] For the form of an affidavit to obtain costs of justification on this rule, see Chit. Pr. Append. 334.

[g] *Per Bayley*, B., Anon. M. 1831.

clared, the bail were not discharged; but were liable for so much as was sworn to, and indorsed on the process, or for any less sum, which the plaintiff in such action should recover [a], together with the costs of the original action [b]; and there was no distinction in practice between actions commenced by *bill*, and by *original* writ; but the court, in either case, would have entered an *exoneretur* on the bail-piece, on payment of the sum sworn to and costs, though less than the sum acknowledged to be due [c]. In the Common Pleas, each of the bail was separately liable for the sum recovered, to the full extent of the penalty of the recognizance, being double the amount of the sum sworn to, or indorsed on the writ under a judge's order [d]. In the Exchequer, it was a rule [e], that "upon a recognizance of bail, in any action brought in that court, the bail therein were not jointly or severally liable in such action, for more in the whole than the amount of the sum sworn to in the affidavit of the cause of action, together with the costs of such action, unless any proceedings were had upon their recognizance, in which case they would also be subject to such other costs as they were by law liable to." And, by a late rule of all the courts [f], "bail shall only be liable "to the sum sworn to by the affidavit of debt, and the costs of suit; "not exceeding in the whole the amount of their recognizance."

Render of principal, by rejected bail, without entering into fresh recognizance.
Prac. 275. 281, 2.

In the King's Bench, bail, who had been rejected, were still competent to render the defendant, so long as they remained on the bail-piece [g]; though it was otherwise in the Common Pleas, where they must have entered into a fresh recognizance, before they could have rendered the defendant [h]: But, by a late rule of all the courts [i], "bail, though rejected, shall be allowed to render the principal, "without entering into a fresh recognizance."

Time for render, on last day.
Prac. 283, 4.

Formerly, when the plaintiff proceeded by *scire facias* against the bail on their recognizance, the render might have been made, in

[a] R. E. 5 Geo. II. *reg.* II. K. B. Lofft, 545. Doug. 330. 8 Durnf. & E. 28, 9. 1 East, 90. 5 Maule & S. 511.

[b] *Prac.* 280. (*h.*)

[c] 6 East, 312. 2 Smith R. 402. S. C. 5 Maule & S. 511.

[d] Barnes, 76. 1 Bos. & P. 205.; and see 5 Maule & S. 511. 4 Moore, 167. 1 Brod. & B. 490. S. C.

[e] R. H. 38 Geo. III. *in Scac.* Man. Ex. Append. 223. 8 Price, 502.

[f] R. H. 2 W. IV. *reg.* I. § 21.

[g] *Per Cur.* E. 40 Geo. III. K. B. 6 Maule & S. 218. 1 Chit. R. 446. (*a.*)

[h] 1 Taunt. 163, 4. *per Heath*, J.; and see 3 Moore, 240. (*a.*) 1 Chit. R. 446. (*a.*)

[i] R. H. 2 W. IV. *reg.* I. § 20.

CHAP. XII. the King's Bench, at any time before the rising of the court, on the return day of the second *scire facias*, or of the first, when *scire feci* was returned, by *bill*[a]; or, by *original* in that court, as well as in the Common Pleas, at any time before the rising of the court on the appearance day, or *quarto die post*, of the return of the second *scire facias*[b], or of the first, when *scire feci* was returned[c], and not after[d]. When the plaintiff proceeded by action of *debt* on the recognizance, the render might have been made, in the King's Bench, by the space of *eight* entire days, in full term, next after the return of the *latitat*, or other process against the bail[e]: In the Common Pleas, the render must have been made before the rising of the court[f], on the *quarto die post* of the return of the process[g]. But, by a late rule of all the courts[h], "bail shall be at liberty to render "the principal, at any time during the last day for rendering, so as "they make such render before the prison doors are closed for the "night."

Render to county gaol, when defendant is at large, in Exchequer.

Prac. 287. 368, 4, 5.

In the Exchequer of Pleas, there is a rule[i], founded on the statute 11 Geo. IV. & 1 W. IV. c. 70. §. 22., that "on application "by a defendant or his bail, or either of them, for an order[k] of one "of the barons of this court, to render a defendant to a county "gaol, it shall be specified on whose behalf such application shall "be made, the state of the proceedings in the cause, for what "amount the defendant was held to bail, and by the sheriff of what "county he was arrested; which facts shall be stated in the order[k]; "and that on such order being lodged with the gaoler of the county "gaol in which such defendant was so arrested, the defendant may "be rendered to his custody, in discharge of the bail; and that on "such lodgment and render, a notice[l] thereof, and of the defend-"ant's being actually in custody thereon, in writing, signed by the "defendant or his bail, or either of them, or the attorney or agent

[a] 1 Ld. Raym. 157. 6 Mod. 238. 8 Mod. 340. R. T. 1 Ann, *reg.* II. (*a.*) R. E. 5 Geo. II. *reg.* III. (*a.*) K. B.; and see 1 Barn. & C. 247. 2 Dowl. & R. 385. S. C.

[b] 1 Wils. 270.

[c] 4 Bur. 2134.

[d] 3 Bur. 1360. 1 Blac. Rep. 393. S. C. 10 Barn. & C. 751. 753. K. B. R. M. 1654. § 12. (*a.*) Cas. Pr. C. P. 53. Barnes, 82. 2 H. Blac. 593. C. P.

[e] R. T. 1 Ann, *reg.* I. K. B. 1 Salk. 101. 1 Ld. Raym. 721. 6 Mod. 132.

[f] Cas. Pr. C. P. 53. Barnes, 82. 2 H. Blac. 593.

[g] R. M. 1654. § 12. C. P. 2 H. Blac. 118.

[h] R. H. 2 W. IV. *reg.* I. § 22.

[i] R. M. 1 W. IV. *reg.* II. § 12. 1 Cromp. & J. 279, 80. 1 Tyr. Rep. 162.

[k] Tidd Sup. 209.

[l] *Id.* 210.

"of any or either of them, shall be delivered to the plaintiff's attorney or agent; and thereupon the bail for such defendant shall be wholly exonerated, without entering an *exoneretur*." And, by another rule of the same court [a], "if a defendant shall be in custody of the gaoler of the county gaol of any county in *England* or *Wales*, by virtue of any process issued out of any of his majesty's superior courts of record, he may be rendered in discharge of his bail, in any action depending in this court, in like "manner as is hereinbefore provided for a render in discharge of "bail, and thereupon the bail shall be wholly exonerated from liabi-"lity as such bail."

The like, when defendant is in custody.

In the King's Bench, when the plaintiff declared by *original*, in a different county from that into which the writ issued, his bail were discharged [b]; but, in the King's Bench by *bill*, or in the Common Pleas [c], this variance was not deemed material: And now, by a late rule of all the courts [d], "a declaration laying the venue in "a different county from that mentioned in the process, shall not be "deemed a waiver of the bail."

Bail not discharged, by laying venue in a different county.

Prac. 294. 432.

The bail are in general discharged, if the plaintiff declare against the defendant for a different cause of action from what is expressed in the process [e]. But, in the Common Pleas, a variance between the writ and count, (the *ac etiam* being in *case* on promises, and the declaration in *debt*,) was not deemed a ground for entering an *exoneretur* on the bail piece, where the sum sworn to was under 40*l*.[f] And, by a late rule of all the courts [g], "a variance between "the *ac etiam* and the declaration, where the defendant is arrested, "shall not be deemed ground for discharging the defendant, or the "bail; but the bail-bond, or recognizance of bail, shall be taken "with a penalty or sum of *forty* pounds only."

Effect of variance between *ac etiam* and declaration.

Prac. 294. 450.

[a] R. M. 1 W. IV. *reg.* II. § 13. 1 Cromp. & J. 280, 81. 1 Tyr. Rep. 162.

[b] 3 Lev. 235. R. E. 2 Geo. II. (*a*.) K. B. Barnes, 116.

[c] R. H. 22 Geo. III. C. P.

[d] R. H. 2 W. IV. *reg.* I. § 40.

[e] *Prac.* 294. (*e*.)

[f] 1 H. Blac. 310.

[g] R. H. 2 W. IV. *reg.* I. § 10.

CHAP. XIII.

Of PROCEEDINGS *on the* BAIL-BOND; *and against the* SHERIFF, *to compel him to return the* WRIT, *and bring in the* BODY.

Proceeding on bail-bond, pending rule to bring in body.
Prac. 297.

THE plaintiff was formerly allowed to take an assignment of the bail-bond, when forfeited, and to proceed thereon, even after service of the rule to bring in the body [a], or moving for an attachment; but after he had sued out an attachment against the sheriff, it was holden that he had made his election, and could not afterwards, whilst the attachment remained in force, take an assignment of the bail-bond [b]. And as the defendant, after a rule to bring in the body, was allowed the same time to justify bail, as the sheriff had to bring in the body [c], namely, *four* days in town, and *six* days in country causes, the plaintiff, in the mean time, could not have proceeded on the bond: And accordingly, in the Exchequer of Pleas, it is a rule [d], that "whenever a plaintiff shall rule a sheriff, "on a return of *cepi corpus*, to bring in the body, the defendant shall "be at liberty to put in and perfect bail at any time before the ex- "piration of such rule; and that a plaintiff, having so ruled the she- "riff, shall not proceed on any assignment of the bail-bond, until the "time has expired to bring in the body as aforesaid:" And, by a late rule of all the courts [e], "a plaintiff shall not be at liberty to pro- "ceed on the bail-bond, pending a rule to bring in the body of the "defendant."

[a] 7 Barn. & C. 478. 1 Man. & R. 298. S. C. K. B. 3 Bos. & P. 564. C. P. Wightw. 406. Man. Ex. Pr. 121. Excheq.

[b] *Cunningham* v. *Chambers*, E. 45 Geo. III. K. B., and see 1 Chit. R. 394. *in notis.*

[c] 7 Barn. & C. 478. 1 Man. & R. 298. S. C. K. B. 3 Bos. & P. 564. C. P. 1 Cromp. & J. 281. *Id.* 281, 2. *n.* 1 Tyr. Rep. 18. S. C. Excheq.; but see 1 Cromp. & J. 97. *per Garrow*, B. and *Vaughan*, B. *contra.*

[d] R. M. 1 W. IV. *reg.* II. § 15. 1 Cromp. & J. 281. 1 Tyr. Rep. 163.

[e] R. H. 2 W. IV. *reg.* I. § 23.

At what time bail-bond may be put in suit.
Prac. 298, 9.

In the King's Bench, if bail above were not put in and perfected in due time, the plaintiff might immediately have taken an assignment of the bail-bond, and brought an action thereon: But, in the Common Pleas, it was a rule [a], that "no bail-bond taken in *London* or *Middlesex*, by virtue of any process issuing out of that court, returnable on the *first* return of any term, should be put in suit until after the *fifth* day in full term; and that no bail-bond taken in any other city or county, by virtue of such process, should be put in suit until after the *ninth* day in full term; and that no bail-bond taken in *London* or *Middlesex*, by virtue of any process issuing out of that court, returnable on the *second* or any other subsequent return, should be put in suit, until after the end of *four* days, exclusive of the day on which such process should be expressed to be returnable; and that no bail-bond taken in any other city or county, by virtue of such last-mentioned process, should be put in suit until after the end of *eight* days, exclusive of the day on which such last-mentioned process should be expressed to be returnable; upon pain of having all proceedings upon such bail-bonds to the contrary set aside with costs." And, by a late rule of all the courts [b], "no bail-bond, taken in *London* or *Middlesex*, shall be put "in suit, until after the expiration of *four* days; nor, if taken elsewhere, till after the expiration of *eight* days, exclusive, from the "appearance day of the process."

Bringing several actions on bail-bond.
Prac. 300.

It was formerly usual for the plaintiff to bring several actions, against the principal and his bail, upon the bail-bond; but this practice being considered unnecessary and oppressive, was discountenanced by the courts: And where the assignee of a bail-bond brought separate actions thereon, without suggesting any sufficient reason for so doing, the court of King's Bench, under the discretionary power vested in them by the statute 4 & 5 Ann. c. 16. § 20, stayed the proceedings in all the actions, upon payment of the costs of one of them [c]: And now, by a late rule of all the courts [d], "proceedings on the bail-bond may be stayed, on payment of costs in "one action, unless sufficient reason be shewn for proceeding in "more."

[a] R. T. 30 Geo. III. C. P. 1 H. Blac. 525, 6.; and see a former rule of H. 9 Ann. *reg.* IV. C. P. 2 Blac. Rep. 1009.

[b] R. H. 2 W. IV. *reg.* I. § 24.

[c] 2 Barn. & Ald. 598. 1 Chit. R. 337. S. C.

[d] R. H. 2 W. IV. *reg.* I. § 30.

Action on bail-bond may be brought by sheriff, in any court.
Prac. 300.

The action by the *assignee*, upon the bail-bond, must necessarily be brought in the *same* court whence the process issued, on which the bond was taken [a]; otherwise the parties could not have the relief intended them by the statute. A similar rule was applied, in the King's Bench, to actions brought on the bail-bond by the *sheriff* himself, as well as his assignee [b]; but it was otherwise in the Common Pleas [c], and Exchequer [d]; where the sheriff was allowed to sue on a bail-bond in a different court. And, by a late rule of all the courts [e], "an action may be brought upon a bail-bond, by "the *sheriff* himself, in any court."

Attachment against sheriff, or bail-bond, standing as a security.
Prac. 303, 4. 317.

Upon staying proceedings, either upon an attachment against the sheriff for not bringing in the body, or upon the bail-bond, on perfecting bail above, if the plaintiff has lost a trial, the court or a judge will further require the bail to consent, that the bail-bond shall stand as a security. By *losing a trial* was formerly meant, that the plaintiff had been prevented, by the neglect of the defendant to put in or perfect bail in due time, from trying his cause in, and obtaining judgment of the same term in which the writ was returnable [f]. This, of course, could only happen in *town* causes, or where the venue was laid in *London* or *Middlesex*: In *country* causes, it was not formerly usual, on staying proceedings against the sheriff, or on the bail-bond, when a trial had been lost, to require the sheriff or bail to consent that the bond should stand as a security, though there seems to have been the same reason for it as in town causes [g]. But now, by a late rule of all the courts [h], "upon "staying proceedings, either upon an attachment against the she- "riff for not bringing in the body, or upon the bail bond, on per- "fecting bail above, the attachment, or bail-bond, shall stand as a "security, if the plaintiff shall have declared *de bene esse*, and shall "have been prevented, for want of special bail being perfected "in due time, from entering his cause for trial, in a *town* cause, "in the term next after that in which the writ is returnable; and "in a *country* cause, at the ensuing assizes."

[a] 1 Bur. 642. 2 Ken. 369. S. C. 3 Bur. 1923. Barnes, 92. 117. 3 Wils. 348. 2 Blac. Rep. 838. S. C.
[b] 8 Durnf. & E. 152.
[c] 1 H. Blac. 631.
[d] 8 Price, 174.
[e] R. H. 2 W. IV. *reg.* I. § 28.
[f] 1 Chit. R. 270. (*a.*) 357. (*a.*) and see 1 Dowl. & R. 450. 8 Dowl. & R. 140. 9 Moore, 422. 2 Bing. 227. S. C.
[g] *Prac.* 303. (*l.*)
[h] R. H. 2 W. IV. *reg.* V.

In the Common Pleas, though it was formerly usual to sign judgment, on staying proceedings in an action on the bail-bond, when the bail consented that it should stand as a security, and execution only was stayed[a]; yet it was afterwards holden, that the bail in such case were at liberty to plead to the action on the bail-bond; and consequently were entitled to a rule to plead, and demand of a plea, before judgment could be signed against them[b]. But now, by a late rule of all the courts[c], "in all cases where the "bail-bond shall be directed to stand as a security, the plaintiff "shall be at liberty to sign judgment upon it."

Signing judgment, in action on bail-bond.
Prac. 304, 5.

In the Exchequer of Pleas, by a late rule of court[d], "in case any "process shall have issued out of any of the courts abolished by the "statute 11 Geo. IV. & 1 W. IV. c. 70. § 14. the sheriff, to "whom the same may have been issued, may be ruled to return "such process into the court of Exchequer, in like manner as if the "said process had been returnable in that court; and if such sheriff "shall have made a return to the said court so abolished as afore-"said, or shall make a return to the said court of Exchequer, of "*cepi corpus*, he may be ruled in like manner to bring in the body; "and process so issued as aforesaid, may be returned to that court, "by the sheriffs of the county of *Chester*, county of the city of "*Chester*, and principality of *Wales*, in like manner as if the same "had been returnable in that court."

Rules on sheriff &c. to return process issued out of courts abolished by stat. 11 Geo. IV. & 1 W. IV. c. 70. § 14. and to bring in the body thereon.
Prac. 306.

The writ should regularly be returned by the sheriff, on the day on which the rule for returning it expires, if in term; but, when the rule expired in *vacation*, the sheriff, in the King's Bench, need not formerly have returned it till the *first* day of the ensuing term, and had the whole of that day to file his return[e]: In the Common Pleas, the sheriff in such case must have filed the writ in vacation, and could not have waited till the ensuing term, the Common Pleas office being always open[f]; and this was also the practice in the

Time allowed for returning writ, when rule expires in vacation.
Prac. 307.

[a] Barnes, 85.
[b] 1 New Rep. C. P. 63.
[c] R. H. 2 W. IV. *reg.* I. § 29.
[d] R. M. 1 W. IV. *reg.* III. § 7. 1 Cromp. & J. 285. 1 Tyr. Rep. 165, 6.
[e] 5 East, 386. 1 Smith, 427. S. C.
[f] 5 Taunt. 647. 1 Marsh. 270. S. C.

CHAP. XIII. Exchequer[a]: But now, by a late rule of all the courts[b], "when "the rule to return a writ expires in *vacation*, the sheriff shall file "the writ at the expiration of the rule, or as soon after as the office "shall be open:" and, by another rule[c], "the officer with whom "it is filed, shall endorse the day and hour when it was filed."

[a] 9 Price, 255.
[b] R. H. 2 W. IV. *reg.* I. § 11.
[c] *Id.* § 12.

CHAP. XIV.

Of TAXING *an* ATTORNEY'S BILL, *and his* LIEN *for* COSTS.

Summons and order to deliver, or tax, attorney's bill.

Prac. 335.

IN the Common Pleas, *three* summonses were formerly necessary, in case of non-attendance, before an order could be obtained for the delivery or taxation of an attorney's bill[a]: But, by a late rule of all the courts[b], "an order to deliver or tax an attorney's bill, may be "made at the return of *one* summons, the same having been served "*two* days before it is returnable."

One appointment only necessary for taxing it.

Prac. 336. 680.

There was formerly a rule in the King's Bench[c], that "on every appointment to be made by the master, the party on whom the same was served should attend such appointment, without waiting for a *second*; or in default thereof, the master should proceed *ex parte* on the first appointment." In the Common Pleas, there must have been *three* appointments, in case of non-attendance, before the prothonotary could proceed *ex parte*[d]: But, by a late rule of all the courts[e], "*one* appointment only shall be deemed necessary, for pro- "ceeding in the taxation of an attorney's bill."

[a] Imp. C. P. 7 Ed. 556, 7.
[b] R. H. 2 W. IV. *reg.* I. § 91.
[c] R. H. 32 Geo. III. K. B. 4 Durnf. & E. 560.
[d] Imp. C. P. 7 Ed. 557.
[e] R. H. 2 W. IV. *reg.* I. § 92.

Attorney's lien, on setting off damages or costs. *Prac.* 339. 992.

In the King's Bench, when the defendant applies to set off the debt and costs in one action against those in another, the court in general will not suffer it to be done, until the attorney's bill for business done in the cause wherein he was concerned be first discharged [a]: But it was otherwise in the Common Pleas, where the attorney's lien for costs was held to be subject to the equitable claims that existed between the parties in the cause [b]: And, in the King's Bench, it was holden, that the attorney had a lien on the judgment obtained by his client against the opposite party, to the extent of his costs of that cause only [c]; and the plaintiff, in that court, might have set off interlocutory costs in the *same* cause, payable by him to the defendant, against the debt and costs recovered by him on the final result of the cause, notwithstanding the objection of the defendant's attorney, on the ground of his lien, which only attached on the general result of the costs, &c. of the cause [d]. But now, by a late rule of all the courts [e], "no set off of damages or costs between "parties shall be allowed, to the prejudice of the attorney's lien for "costs, in the particular suit against which the set off is sought; "provided nevertheless, that interlocutory costs in the same suit, "awarded to the adverse party, may be deducted."

[a] 4 Durnf. & E. 123, 4. 6 Durnf. & E. 456. 8 Durnf. & E. 70. 1 Maule & S. 240. 8 Taunt. 526.

[b] 2 Blac. Rep. 826. Say. Costs, 254. S. C. 1 H. Blac. 23. 217. 2 H. Blac. 440. 587. 2 Bos. & P. 28. 1 New Rep. C. P. 22. 4 Taunt. 320. 8 Taunt. 526. 5 Moore, 95. 12 Moore, 87. 4 Bing. 16. S. C. 8 Bing. 29.

[c] 3 Barn. & C. 535. 5 Dowl. & R. 399. S. C. 4 Bing. 17. S. C. cited,

[d] 8 East, 362. 1 Price, 375.; and see 9 Barn. & C. 760.

[e] R. H. 2 W. IV. reg. I. § 93.

CHAP. XV.

Of PROCEEDINGS *against* PRISONERS.

Two copies only necessary of declaration against prisoner, in custody of sheriff, &c.

Prac. 344, 5.

IT was formerly necessary, in the King's Bench, when the defendant was in custody of the sheriff, &c., to make *three* copies of the declaration: one to be delivered to the defendant, or left for him with the gaoler or turnkey; another, to be annexed to the original affidavit of such delivery, and filed with the clerk of the rules; and a third, to be annexed to an office copy of such affidavit: On this last copy, a rule was given with the clerk of the rules, for the defendant to appear and plead; and in default thereof, judgment might have been signed [a]. In the Common Pleas, the production of a copy of the affidavit to the prothonotary being dispensed with [b], it was only necessary to have *two* copies of the declaration; one to be delivered to the defendant, or left for him with the gaoler or turnkey, and the other to be annexed to an affidavit of such delivery; upon which latter copy, the secondary would give a rule for the defendant to appear and plead. And now, by a late rule of all the courts [c], "when the plaintiff declares against a prisoner, it shall "not be necessary to make more than *two* copies of the declaration, "of which one shall be served, and another filed with an affidavit "of service, upon the office copy of which affidavit, a rule to plead "may be given."

Time for proceeding to trial, or final judgment, against prisoners.

Prac. 362. 365.

There was formerly a distinction between the rules of the King's Bench and Common Pleas, as to the time allowed for proceeding against prisoners: In the former court, it was required that the plaintiff should proceed to *trial* or final judgment, within *three* terms inclusive after declaration, and should cause the defendant to be charged in execution, within *two* terms inclusive after such *trial* or judgment, of which the term, in or after which the trial was had,

[a] R. E. 5 W. & M. *reg.* III. § 2. (*b.*) K. B.

[b] Imp. C. P. 7 Ed. 666. 672.

[c] R. H. 2 W. IV. *reg.* I. § 36.

was reckoned as one [a]. In the Common Pleas, no notice was taken of the *trial;* the rule [b] being, that the plaintiff should proceed to *judgment,* within *three* terms inclusive after declaration, and charge the defendant in execution, within *two* terms inclusive after judgment against him: But, by a late rule of all the courts [c], "the plaintiff "shall proceed to trial, or final judgment, against a prisoner, within "*three* terms inclusive after declaration, and shall cause the de- "fendant to be charged in execution within *two* terms inclusive "after such trial or judgment; of which the term in or after which "the trial was had shall be reckoned one."

To charge defendant in execution, proceedings need not be entered of record.

In order to charge a defendant in execution, in the King's Bench, the proceedings must formerly have been entered of record, and the judgment roll docketed and filed [d]: But, by a late rule of all the courts [e], "in order to charge a defendant in execution, it shall not "be necessary that the proceedings be entered of record."

Prac. 368.

Lists to be presented to judges, of prisoners supersedeable, &c.

The rules of the court of King's Bench, of Trin. 56 [f], and Mich. 57 Geo. III. [f], requiring the marshal to present a list to the judges, of prisoners supersedeable, &c., were extended by a late rule of all the courts [g]; by which it is ordered, that "the marshal of the King's "Bench prison, and the warden of the *Fleet,* shall present to the "judges of the courts of King's Bench, Common Pleas, and Ex- "chequer, in their respective chambers at *Westminster,* within the "first *four* days of every term, a list of all such prisoners as are "supersedeable; shewing as to what actions, and on what account "they are so, and as to what actions, if any, they still remain not "supersedeable." And, by another rule of all the courts [h], "if by "reason of any writ of error, special order of the court, agreement "of parties, or other special matter, any person detained in the ac- "tual custody of the marshal of the King's Bench prison, or war- "den of the *Fleet,* be not entitled to a *supersedeas* or discharge, to "which such prisoner would, according to the general rules and "practice of the court be otherwise entitled, for want of declaring, "proceeding to trial or judgment, or charging in execution, within "the times prescribed by such general rules and practice, then and "in every such case, the plaintiff or plaintiffs, at whose suit such

Prac. 368.

[a] 4 East, 349.
[b] R. E. 8 Geo. I. C. P.
[c] R. H. 2 W. IV. *reg.* I. § 85.
[d] Imp. K. B. 10 Ed. 619.
[e] R. H. 2 W. IV. *reg.* I. § 95.
[f] 5 Maule & S. 522.
[g] R. H. 2 W. IV. *reg.* I. § 86.
[h] *Id.* § 87.

CHAP. XV. "prisoner shall be so detained in custody, shall, with all convenient "speed, give notice in writing of such writ of error, special order, "agreement, or other special matter, to the marshal or warden, "upon pain of losing the right to detain such prisoner in custody, "by reason of such special matter; and the marshal or warden "shall forthwith after the receipt of such notice, cause the matter "thereof to be entered in the books of the prison, and shall also "present to the judges of the respective courts, from time to time, "a list of the prisoners to whom such special matter shall relate, "shewing such special matter, together with the list of the prisoners "supersedeable."

Discharge of such prisoners. *Prac.* 368.

By a rule of Trin. 19 Geo. III. K. B., "all prisoners who have been, or shall be in custody of the marshal for the space of *six* months after they are supersedeable, although not superseded, shall be forthwith discharged out of the King's Bench prison, as to all such actions in which they have been or shall be supersedeable." There is also a similar rule in the Common Pleas[a], for discharging prisoners out of the *Fleet* prison. And, by a subsequent rule of all the courts[b], "all prisoners who have been, or shall "be in the custody of the marshal or warden, for the space of *one* "calendar month after they are supersedeable, although not superseded, shall be forthwith discharged out of the King's Bench or "*Fleet* prison, as to all such actions in which they have been, or "shall be supersedeable."

Order for discharge of prisoner, for not declaring, &c. *Prac.* 369.

In the King's Bench, if the plaintiff's attorney did not attend and shew cause against it, the judge would have formerly made an order for the defendant's discharge on the *first* summons, if the application were for not declaring: In the Common Pleas, the order on the *first* summons, if not consented to, was only an order *nisi*, unless cause were shewn within *six* days[c]; and, in either court, if it were for not proceeding to judgment or execution in due time, there must have been *three* summonses, before the judge would have made an order for non-attendance; and, in a *country* cause, the order, on attendance, was not absolute in the first instance, but only an order *nisi*, unless cause were shewn within a limited time, to give the agent an opportunity of writing to his client for instruc-

[a] R. H. 6 & 7 Geo. IV. C. P. 11 Moore, 332. 3 Bing. 442.

[b] R. H. 2 W. IV. *reg.* I. § 88.

[c] Imp. C. P. 7 Ed. 677.

tions. But, by a late rule of all the courts [a], "the order of a judge "for the discharge of a prisoner, on the ground of a plaintiff's "neglect to declare, or proceed to trial or final judgment, or execu- "tion, in due time, may be obtained at the return of *one* summons, "served *two* days before it is returnable; such order, in *town* "causes, being absolute, and in *country* causes, unless cause shall "be shewn within *four* days, or within such further time as the "judge shall direct."

Rule for discharge of prisoner, on stat. 48 Geo. III. c. 123.

Prac. 388.

On a motion for the discharge of an insolvent debtor, under the statute 48 Geo. III. c. 123., for the relief of debtors in execution for *small* debts, the rule, in the King's Bench, was absolute in the first instance, after due notice of the application had been given to the plaintiff, or his attorney [b]: In the Common Pleas, it was in the first instance only a rule *nisi* [c]: But, by a late rule of all the courts [d], "a rule or order for the discharge of a debtor who has been "detained in execution a *year*, for a debt under *twenty* pounds, may "be made absolute in the first instance, on an affidavit of notice "given *ten* days before the intended application; which notice may "be given before the year expires."

[a] R. H. 2 W. IV. *reg.* I. § 89.

[b] 2 Barn. & C. 804. 4 Dowl. & R. 361. S. C.

[c] 7 Taunt. 37. 467.; and see 8 Moore, 80.

[d] R. H. 2 W. IV. *reg.* I. § 90.

CHAP. XVI.

Of the REMOVAL *of* CAUSES.

Removal of causes from *Chester*, and *Wales*, &c. into court of Exchequer, on stat. 11 Geo. IV. & 1 W. IV. c. 70. § 14.

Prac. 397.

BY the late act for the more effectual administration of justice in *England* and *Wales*[a], it is (amongst other things) enacted, that "all the power, authority, and jurisdiction of his Majesty's court "of Session of the county palatine of *Chester*, and of the judges "thereof, and of his court of Exchequer of the said county pala- "tine, and of the chamberlain and vice chamberlain thereof, and "also of his judges and courts of Great Sessions in the principality "of *Wales*, shall cease and determine at the commencement of the "said act; and that all suits at law then depending in any of the "said courts, shall be transferred to the Court of Exchequer, there "to be dealt with and decided according to the practice of the said "Court of Exchequer, or of the court from whence the same shall "be transferred, according to the discretion of the court to which "the same shall be transferred; which court shall, for the purpose "of such suits only, be deemed and taken to have all the power and "jurisdiction, to all intents and purposes, possessed before the pass- "ing of that act, by the court from whence such suit shall be re- "moved." On this act rules of court were made, in the Exchequer of Pleas[b], by which it is ordered, that "as to all suits at law de- "pending in any of the said courts on the *twelfth* day of *October* "then last past, the same shall be dealt with and decided accord- "ing to the practice of the said Court of Exchequer, unless that "court, or a baron thereof at chambers, shall, upon special ap- "plication, upon notice to an adverse party, otherwise direct."

Rules of court thereon.

Times and modes of proceeding appointed thereby.

Particular times and modes of proceeding are appointed by the above rule, in cases where process shall have been served, and the

[a] 11 Geo. IV. & 1 W. IV. c. 70. § 14. 1 Cromp. & J. 282, &c. 1 Tyr. Rep. 163, &c.

[b] R. M. 1 W. IV. *reg.* III. § 1, &c.

plaintiff shall not have declared; or in which a declaration has been delivered or filed in the court of Sessions; or interlocutory or final judgment shall have been signed, in any of the courts abolished by that act: And it is thereby further ordered [a], that "any proceeding "taken in any court abolished by the said act, may be continued by "way of suggestion, in the said court of Exchequer; such suggestion being subject to correction, upon a summons for the purpose, by any of the barons of that court."

Proceedings in courts abolished, may be continued by suggestion.

In a case arising on the above act of parliament [b], the late court of Great Sessions for the county of *Chester*, at the Summer sessions 1830, issued an attachment, returnable at the next Great Sessions, against the attorney in a cause, for the nonpayment of the defendant's costs: Before the next Great Sessions, the act came into operation; but previously to that time, the sheriff had taken a bail-bond for the appearance of the attorney, pursuant to the attachment: The sheriff being ruled, in *Easter* term following, to return the writ into the court of Exchequer, returned *cepi corpus*, and that he was ready to have his body before the justices at *Chester* at the return; but that before the return, the court was abolished: and the court of Exchequer held, that the return was insufficient, and that the application against the sheriff, in *Easter* term, was in time. In another case [c], where, in *March* 1823, the defendant, having been served with a new rule in *Carnarvonshire*, signed a *cognovit* at the foot of a *concessit solvere;* and, in *October* 1830, the plaintiff issued a *queritur*, which was not served, signed judgment, and removed the proceedings into the court of Exchequer; after which the plaintiff took out a summons to issue execution, which, with the notice to tax costs, was served upon the defendant, who did not attend the summons, or taxation of costs, but prayed time to pay the debt; the court of Exchequer held, that the judgment was regular, according to the practice of the late court of Great Sessions; and that the defendant, by his subsequent conduct, would have waived any irregularity in the judgment. But a judgment cannot be entered up, in the Exchequer, on a warrant of attorney to confess judgment in the Great Sessions in *Wales*, given previously to the above act [d].

Decisions on the above act.

[a] R. M. 1 W. IV. *reg.* III. § 6. 1 Cromp. & J. 284, 5. 1 Tyr. Rep. 165.

[b] 1 Cromp. & J. 447.

[c] 2 Cromp. & J. 55.

[d] 1 Cromp. & J. 387. 1 Tyr. Rep. 351. S. C.

Time allowed for excepting to bail, on *habeas corpus*.
Prac. 409.

When special bail were put in upon a *habeas corpus*, and notice thereof given to the plaintiff's attorney, he was formerly allowed *twenty-eight* days in the King's Bench, or in the Common Pleas *twenty* days [a] after they were put in, to except to them: But, by a late rule of all the courts [b], "the time allowed for excepting to "bail, put in upon a *habeas corpus*, shall be *twenty* days."

Time for giving rule to declare, on removal of cause.
Prac. 417, 18.

On the removal of a cause from an inferior court, the rule to declare might formerly have been given, in the King's Bench, within *fourteen* days [c], or, in the Common Pleas, within *four* days after the end of the term [d]: And now, by a late rule of all the courts [e], "where a cause has been removed from an inferior court, the rule "to declare may be given within *four* days after the end of the term "in which the writ is returned."

Demand of declaration necessary, before *non-pros* can be signed.
Prac. 417, 18.

When the writ of *pone* or *recordari*, &c. was brought by the defendant, if the return had been filed on or before the appearance day, there was formerly no occasion to demand a declaration in writing [f]; but otherwise a written demand was necessary [g]: And now, by a late rule of all the courts [h], "no judgment of *nonpros* "shall be signed, for want of a declaration, until *four* days next "after a demand [i] thereof shall have been made in writing, upon "the plaintiff, his attorney or agent, as the case may be."

[a] R. M. 1654. § 11. R. H. 13 & 14 *Car.* II. C. P.
[b] R. H. 2 W. IV. *reg.* I. § 25.
[c] 11 East, 183.
[d] Allen v. Millward, H. 30 Geo. III. C. P. Imp. C. P. 7 Ed. 533, 4.
[e] R. H. 2 W. IV. *reg.* I. § 37.; and see *id.* § 38.
[f] 1 H. Blac. 281. 2 Moore, 643. (*c.*)
[g] Pr. Reg. 370. Cas. Pr. C. P. 55. S. C.
[h] R. T. 1 W. IV. *reg.* IV. 7 Bing. 784. 1 Cromp. & J. 471.
[i] Append. § 20.

CHAP. XVII.

Of the DECLARATION.

Time for declaring.
Prac. 421.

MR. Justice *Buller* having expressed an opinion, in the case of *Worley* v. *Lee* [a], that by the general rules of law, a plaintiff must have declared against a defendant within *twelve months* after the return of the writ, though, by the rules of the court, if he did not deliver a declaration within two terms, the defendant might have signed a judgment of *non pros*, it was settled, agreeably to that opinion, that unless he took advantage of the plaintiff's neglect, by signing a judgment of *non pros*, the plaintiff might deliver his declaration, at any time within a *year* next after the return of the writ [b]. And accordingly, by a late rule of all the courts [c], "a "plaintiff shall be deemed out of court, unless he declare within "*one year* after the process is returnable."

Rule to declare, and demand of declaration.
Prac. 417, 18. 421, 2. 458. 483.

In the King's Bench it was formerly a rule, that "on all process issuing out of that court, returnable at a day certain, if the defendant appeared by his attorney, and filed bail of the term wherein the process was returnable, and the plaintiff did not declare before the end of the term next following, a judgment of *non pros* might have been signed, without entering any rule to declare, or calling for a declaration [d]"; which rule applied to actions by *original* writ [e] in that court, as well as by *bill*. In the Common Pleas, however, the defendant must, before the end of the second term, or within *four* days after, have entered a rule for the plaintiff to declare [f], and demanded a declaration. But, by a late rule of all the courts [g], "it shall not be necessary for a defendant, in any case, to give a rule

[a] 2 Durnf. & E. 112.

[b] 3 Durnf. & E. 128, 4. 5 Durnf. & E. 35. 7 Durnf. & E. 7.; but see 12 Mod. 217. 2 New Rep. C. P. 464. 9 Barn. & C. 544.

[c] R. H. 2 W. IV. *reg.* I. § 35.

[d] R. M. 10 Geo. II. *reg.* II. (*b.*) K. B. Gilb. K. B. 345.

[e] Imp. K. B. 10 Ed. 493. 531.

[f] R. H. 9 Ann. *reg.* III. C. P. Imp. C. P. 7 Ed. 194, 5.

[g] R. H. 2 W. IV. *reg.* I. § 38.

CH. XVII. "to declare, except upon removals from inferior courts." Still however, by a previous rule of all the courts [a], (which has been already noticed at the end of the last chapter,) "no judgment of *non pros* "shall be signed, for want of a declaration, until *four* days next "after a demand [b] thereof shall have been made in writing, upon "the plaintiff, his attorney or agent, as the case may be."

Rule for time to declare.
Prac. 423, 4. 484.

If the plaintiff be not ready to declare, before the end of the next term after the return of the process, he may obtain a side-bar or treasury rule from the clerk of the rules in the King's Bench [c], or one of the secondaries in the Common Pleas [d], for time to declare, until the first day of the ensuing term; and, in the Common Pleas, there is no difference in this respect between a rule for time to declare in *replevin*, and in other actions [e]. In the Exchequer of Pleas, the mode of obtaining time to declare was by summons and order of a baron [f]; and the time given was in the discretion of the baron making the order, regulated by the cause of action, and circumstances of the case [g]. But, by a late rule of all the courts [h], "the "plaintiff may have a rule for time to declare in the court of Ex- "chequer, as well as in the other courts."

In Exchequer.
Prac. 423, 4. 484.

Rule to declare peremptorily, absolute in first instance.
Prac. 424. 487, 8.

The rule for the plaintiff to declare *peremptorily*, in the King's Bench, is absolute in the first instance, and drawn up on a motion paper signed by counsel [i]: In the Common Pleas, it was formerly a rule to shew cause [k]: But, by a late rule of all the courts [l], "a "rule to declare *peremptorily* may be absolute in the first in- "stance."

Declaring by *original* in a different county, no waiver of bail.
Prac. 294. 432.

In actions by *original*, the venue, in the King's Bench, must formerly have been laid in the county where the writ was brought; and if it were not so laid, the court would have set aside the proceedings for irregularity, and the plaintiff, we have seen [m], would have lost his bail: But, by a late rule of all the courts [n], "a decla-

[a] R. T. 1 W. IV. *reg.* IV. 7 Bing. 784. 1 Cromp. & J. 471.
[b] Append. § 20.
[c] Prac. Append. Chap. XVII. § 1.
[d] *Id.* § 2.
[e] 5 Taunt. 35.
[f] Dax, Pr. 54.
[g] Price, Pr. 216.
[h] R. H. 2 W. IV. *reg.* I. § 38.
[i] *Prac.* Append. Chap. XVII. § 5.
[k] *Id.* § 6.
[l] R. H. 2 W. IV. *reg.* I. § 39.
[m] *Ante*, 29.
[n] R. H. 2 W. IV. *reg.* I. § 40.

" ration laying the venue in a different county from that mentioned " in the process, shall not be deemed a waiver of the bail."

Recital of original writ in declaration unnecessary, in all personal and mixed actions. *Prac.* 433.

It was formerly usual for the declaration by *original*, to repeat the whole of the original writ [a]: But this practice being productive of great and unnecessary prolixity, rules of court were made, in the King's Bench [b] and Common Pleas [c], that " declarations in actions upon the *case*, and general statutes, other than *debt*, repeat not the original writ, but only the nature of the action, as that the defendant was attached to answer the plaintiff, *in a plea of trespass upon the case, or, in a plea of trespass and contempt, against the form of the statute:*" And, by a late rule of all the courts [d], " the rules heretofore made, in the courts of King's Bench and " Common Pleas respectively, for avoiding long and unnecessary " repetitions of the original writ, in certain actions therein men- " tioned, shall be extended and applied, in the courts of King's " Bench, Common Pleas, and Exchequer of Pleas, to all personal " and mixed actions; and that in none of such actions, shall the " original writ be repeated in the declaration, but only the nature " of the action stated, in manner following: viz. '*A. B. was at-* " *tached to answer C. D. in a plea of trespass* [e], *or in a plea of* " *trespass and ejectment* [f],' or as the case may be; and any further " statement shall not be allowed in costs."

Form of declaring, on bills or notes, &c. *Prac.* 440.

It having been found, that declarations in actions upon bills of exchange, promissory notes, and the counts usually called the common counts, occasioned unnecessary expense to parties, by reason of their length, and that the same might be drawn in a more concise form; it was, for the prevention of such expense, ordered by a late rule of all the courts [g], that " if any declaration in *as-* " *sumpsit*, hereafter filed or delivered, being for any of the demands " mentioned in the schedule of forms and directions annexed to that " order [h], or demands of a like nature, shall exceed in length such

[a] Com. Dig. tit. *Pleader*, C. 12.
[b] R. M. 1654. § 12. K. B.
[c] R. M. 1654. § 16. C. P.
[d] R. H. 2 W. IV. *reg.* IV.
[e] Append. § 21.
[f] *Id.* § 22.
[g] R. T. 1 W. IV. *reg.* X. 7 Bing. 774, 5. 1 Cromp. & J. 474, 5.
[h] Append. § 23, 4. And for precedents of declarations, in *assumpsit* and *debt*, upon bills of exchange, and promissory notes, &c., and on the common counts, see Mr. *Hennell's* useful collection of Forms, prepared in conformity with the above rule.

CH. XVII. "of the said forms, set forth or directed in the said schedule, as may "be applicable to the case; or if any declaration in *debt*, to be so "filed or delivered, for similar causes of action, and for which the "action of *assumpsit* would lie, shall exceed such length, no costs "of the excess shall be allowed to the plaintiff, if he succeeds in "the cause; and such costs of the excess as have been incurred by "the defendant, shall be taxed and allowed to the defendant, and "be deducted from the costs allowed to the plaintiff: And it was "further ordered, that on the taxation of costs, as between attor-"ney and client, no costs shall be allowed to the attorney, in respect "of any such excess of length; and in case any costs shall be pay-"able by the plaintiff to the defendant, on account of such excess, "the amount thereof shall be deducted from the amount of the at-"torney's bill."

Costs allowed for declaration. *Prac.* 440.

In actions to which the above rule applies, if the debt amounts to *twenty* pounds and upwards, and the declaration is under *twenty-four folios*, the officer who taxes the costs is authorized, by instructions given by the courts to their taxing officers, in *Hilary* term 1832, to allow for declaration, including instructions, copy, and delivery, 1*l.* 18*s.*; and for close copy, in *country* causes, according to length: Provided, that the above instructions shall not extend to cases in which several actions shall be brought on the same bill or note, against several parties thereto.

Effect of variance between *ac etiam* and declaration. *Prac.* 450.

In bailable cases, the declaration should regularly correspond with the *ac etiam* in the writ, as to the nature of the cause of action: Therefore, where the plaintiffs, having held the defendants to bail on an affidavit in *assumpsit*, delivered a declaration in *trover*, the court of King's Bench ordered an *exoneretur* to be entered on the bail-piece [a]: But they would not permit a defendant to take advantage of a variance in the amount of the debt, between the *ac etiam* part of the *latitat*, and the declaration [b]: And though, where there was a material variance between the *ac etiam* in the writ and the declaration, the plaintiff would have lost his bail [c], yet the court would not on that ground set aside the proceedings for irregularity [d].

[a] 7 Durnf. & E. 80.; and see 8 Durnf. & E. 27.

[b] 5 Durnf. & E. 402. 11 Moore, 457.

[c] *Ante*, 29.

[d] *Per Cur.* M. 43 Geo. III. K. B. 2 Moore, 89. 8 Taunt. 169. S. C.; and see 2 Moore, 301. 8 Taunt. 304. S. C. 11 Moore, 457. C. P.

In the Common Pleas, however, a variance between the writ and the count, the *ac etiam* being in *case* on promises, but the declaration in *debt*, was not deemed a ground for entering an *exoneretur* on the bail-piece, where the sum sworn to was under 40*l.* [a] And, by a late rule of all the courts [b], "a variance between the *ac* "*etiam* and the declaration, where the defendant is arrested, shall "not be deemed ground for discharging the defendant, or the bail; "but the bail-bond, or recognizance of bail, shall be taken with a "penalty or sum of *forty* pounds only."

Declaring *de bene esse*, on serviceable process, in Exchequer. *Prac.* 454.

In the Exchequer of Pleas, it is a rule [c], that "upon process of "*quo minus* and *venire facias*, personally served on a defendant, "and upon all writs of *distringas*, whereupon notice, pursuant to "the statute 7 & 8 Geo. IV. c. 71, shall be given, returnable on "any day of the term, the plaintiff shall be at liberty to declare "*de bene esse*, within *eight* days after the return thereof, or on ap-"pearance in chief."

Filing and entering declarations *de bene esse*, in Exchequer. *Prac.* 454.

There is also a rule, in the Exchequer of Pleas [d], that "all de-"clarations *de bene esse* shall be filed with the sworn or side clerks, "or their deputy, and shall be entered, in alphabetical order, in "proper books for each term, to be kept by them for that purpose; "which books shall, at all times within office hours, be open to the "inspection of the persons admitted to practise as attornies of that "court, and their clerks, without fee or reward; and the declara-"tion so filed shall and may be taken out of the office, by the de-"fendant or his attorney, upon payment of the fees payable in "respect thereof."

Time for declaring *de bene esse*. *Prac.* 456.

It was formerly usual, in the King's Bench [e] and Exchequer [f], to serve the process on the return day, and to file the declaration *de bene esse*, and give notice thereof to the defendant, on the same day; and, in the Common Pleas, notice of the declaration being

[a] 1 H. Blac. 318.

[b] R. H. 2 W. IV. *reg.* I. § 10. *Ante*, 29.

[c] R. M. 1 W. IV. *reg.* II. § 11. 1 Cromp. & J. 279. 1 Tyr. Rep. 161, 2.; and see R. M. 53 Geo. III. Man. Ex. Append. 226, 7. 8 Price, 508, 9.

[d] R. M. 1 W. IV. *reg.* II. § 6. 1 Cromp. & J. 277. 1 Tyr. Rep. 159.

[e] 3 Smith R. 482. 12 East, 116. 2 Chit. R. 164, 5. 7 Dowl. & R. 239.

[f] 9 Price, 153. M'Clel. 659. 13 Price, 800. S. C.

CH. XVII. so filed might have been given on the return day of the writ, at the time of serving it [a]: But now, by a late rule of all the courts [b], "no declaration *de bene esse* shall be *delivered* [c], until the expira- "tion of *six* days from the service of the process, in the case of "process which is not bailable, or until the expiration of *six* days "from the time of the arrest, in case of bailable process; and such "*six* days shall be reckoned inclusive of the day of such service or "arrest;" which rule applies to declarations *filed*, as well as *delivered, de bene esse* [d]. As this rule, however, might have enabled a defendant, when served with process or arrested within *six* days of the end of an issuable term, to prevent the plaintiff from declaring, so as to have a plea of the term [e], and proceed to trial at the next assizes; it was ordered, by a subsequent rule [f], that "in *Hilary* and "*Trinity* terms, a plaintiff, in any country cause, may file or de- "liver a declaration *de bene esse*, within *four* days after the end of "the term, as of such term."

Notice of declaration need not state amount of damages.
Prac. 457.

It was formerly usual to state the amount of the *damages* in a notice of declaration, in the King's Bench [g]: But this was not necessary in the Common Pleas [h]: And, by a late rule of all the courts [i], "it shall not be deemed necessary to express the amount "of damages, in a notice of declaration."

In what cases declaration may be stuck up in office.
Prac. 457.

In the Common Pleas, where the defendant's place of abode was unknown to the plaintiff or his attorney, application must formerly have been made to the court, that affixing the declaration in the office might be deemed good service [k]; and it was not so considered, unless by express permission of the court, though the defendant's place of abode were unknown to the plaintiff [l]. In a subsequent case, that court would not allow the affixing of a notice of declaration in the prothonotaries' office, to be good service; although it was sworn, that the defendant had no fixed place of residence, and

[a] 3 Taunt. 404. 8 Taunt. 127. 1 Moore, 573. S. C.
[b] R. T. 1 W. IV. *reg.* VI. 7 Bing. 784. 1 Cromp. & J. 472.
[c] The usual words "*filed or*" are here omitted. Chit. Pr. 77. *n.*
[d] Giles v. Gale, M. 1831. C. P.
[e] Chit. Pr. 77. *n.*
[f] R. H. 2 W. IV. *reg.* III.
[g] Imp. K. B. 10 Ed. 186.
[h] 6 Taunt. 331.
[i] R. H. 2 W. IV. *reg.* I. § 41.
[k] 1 Taunt. 433.
[l] 5 Taunt. 777.; and see 7 Taunt. 145. 1 Chit. R. 675. (*a.*)

that the plaintiff did not know where to find him [a]: And, by a late rule of all the courts [b], "where the residence of a defendant is un- "known, notice of declaration may be stuck up in the office; but "not without previous leave of the court." [c]

[a] 8 Moore, 273.

[b] R. H. 2 W. IV. *reg.* I. § 49.

[c] For the form of an affidavit to obtain leave to stick up notice of declaration in the office, see Chit. Pr. *Addend.* 17. (49.)

CHAP. XVIII.

Of IMPARLANCE, *and* TIME *for* PLEADING; *and of the* RULE *to* PLEAD, *and* DEMAND *of* PLEA, &c.

In what cases defendant must plead without imparlance.

Prac. 466, 7.

FORMERLY, when the process, in the King's Bench, was returnable the last return of the term [a]; or, in the Common Pleas, when it was returnable on that return, and the declaration was not filed or delivered on the return-day, or on the day following [b]; or where the process, in either court, was returnable before, but the declaration was not delivered, or filed and notice thereof given, *four* days *exclusive* before the end of the term [c], the defendant, if completely in court, was entitled to an *imparlance:* But, by a late rule of all the courts [d], "upon every declaration delivered or filed, on or "before the *last* day of any term, the defendant, whether in or out "of any prison, shall be compellable to plead as of such term, with- "out being entitled to any imparlance." If the writ and appearance, however, be of one term, and the declaration of another, the de-

[a] R. T. 5 & 6 Geo. II. (*b.*) R. M. 10 Geo. II. *reg.* II. R. T. 22 Geo. III. K. B.

[b] R. H. 35 Geo. III. C. P. 2 H. Blac. oct. Ed. 551. 7 Taunt. 71. (*a.*) 2 Marsh. 337. (*a.*) 2 Chit. R. 381.

[c] R. T. 5 & 6 Geo. II. (*b.*) K. B.

[d] R. T. 1 W. IV. *reg.* III. 7 Bing. 784. 1 Cromp. & J. 471.

CH. XVII. fendant is still entitled to an imparlance, notwithstanding the above rule[a].

Computation of time for pleading, and when the days are reckoned exclusively or inclusively.
Prac. 466.

In computing the time for pleading to declarations in the Common Pleas, the days were formerly reckoned *inclusively;* so that if a declaration were filed or delivered on the *first*, with notice to plead in *four* days, the plaintiff was entitled to sign judgment for want of a plea, on the opening of the office in the afternoon of the *fifth* day. But it should be remembered, that by a late rule of all the courts[b], "in all cases in which any particular number of days, not "expressed to be clear days, is prescribed by the rules or practice of "the courts, the same shall be reckoned *exclusively* of the first day, "and *inclusively* of the last day, unless the *last* day shall happen to "fall on a *Sunday, Christmas day, Good Friday,* or a day appointed "for a public fast or thanksgiving, in which case the time shall be "reckoned *exclusively* of that day also."

Time for pleading, on serviceable process, in Exchequer.
Prac. 467, 8.

In the Exchequer of Pleas, it is a rule[c] that "upon process of "*quo minus* and *venire facias*, personally served on a defendant, and "upon all writs of *distringas*, whereupon notice, pursuant to the "statute 7 & 8 Geo. IV. c. 71, shall be given, returnable on any "day of the term, if the plaintiff declare, either conditionally or in "chief, in *London* or *Middlesex*, and the defendant live within "*twenty* miles of *London*, the defendant shall plead within *four* "days after such declaration shall be filed or delivered, with notice "to plead accordingly, without any imparlance; and in case the "plaintiff declare in any other county, or the defendant live above "*twenty* miles from *London*, the defendant shall plead within *eight* "days after such declaration shall be filed or delivered, with notice "to plead accordingly, without any imparlance; provided such de-"claration be filed or delivered on or before the last day of the term "in which such process shall be returnable, and a rule to plead be "duly entered."

After delivery of bill of particulars.
Prac. 469. 598.

After the delivery of a bill of particulars, except where an order has been obtained for further time, the defendant, in the King's Bench, had formerly the same time to plead as he had when the

[a] 2 Cromp. & J. 140.
[b] R. H. 2 W. IV. *reg.* VIII. *Ante*, 10.
[c] R. M. 1 W. IV. *reg.* II. § 11. 1 Cromp. & J. 279. 1 Tyr. Rep. 161.

summons for it was returnable[a]; and, in the Common Pleas, the plaintiff could not have signed judgment, for want of a plea, till the expiration of *twenty-four* hours after the delivery of a bill of particulars; though the time for pleading were expired, and a demand of plea given, more than *twenty-four* hours before that time[b]: And accordingly, by a late rule of all the courts[c], "a defendant shall be "allowed the same time for pleading, after the delivery of particu- "lars under a judge's order, which he had at the return of the "summons; nevertheless, judgment shall not be signed, till the "afternoon of the day after the delivery of the particulars, unless "otherwise ordered by the judge."

Rule to plead unnecessary, after amending declaration.

Prac. 469. 475. 708.

In the King's Bench, if the plaintiff amended his declaration the same term, the defendant had formerly *two* days, exclusive of the day of amendment, to alter his first plea, or plead *de novo*[d]; but if the amendment were made in a subsequent term, the defendant was entitled to a new *four*-day rule to plead[e]. In the Common Pleas, it seems that a new *four*-day rule to plead was in all cases necessary to be given by the plaintiff, on amending his declaration[f]; but a rule was afterwards made in that court[g], by which it was ordered, that "where any amendment in the declaration should be made after a rule to plead had been entered, no new rule to plead should be necessary, provided such amendment were made in the term, or the vacation succeeding the term, in or of which the rule to plead had been entered; and that the defendant should have *two* days, exclusive of the day on which the amendment was actually made, to alter his plea, or plead *de novo*, unless otherwise ordered by the court, or a judge, granting leave for the amendment." And, by a late rule of all the courts[h], "where an amendment of the "declaration is allowed, no new rule to plead shall be deemed ne- "cessary, whether such amendment be made of the same term as "the declaration, or of a different term."

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[a] 13 East, 508.; and see 4 Barn. & C. 970. 7 Dowl. & R. 458. S. C.

[b] 2 New Rep. C. P. 361.

[c] R. H. 2 W. IV. *reg.* I. § 48.

[d] 1 Str. 705.; and see R. M. 10 Geo. II. *reg.* II. (*b.*) K. B.

[e] 8 Durnf. & E. 87.

[f] 2 Blac. Rep. 785.

[g] R. E. 1 W. IV. 7 Bing. 556.

[h] R. H. 2 W. IV. *reg.* I. § 42.

Demand of plea, when and how made.

Prac. 359. 476.

In the King's Bench, a demand of plea might formerly have been made at the time of delivering the declaration [a], and indorsed thereon [b]: In the Common Pleas, a demand of plea must have been made after declaration delivered, and a rule to plead given; a demand of plea indorsed on the declaration [c], or made before the rule to plead was given [d], being deemed insufficient: But, by a late rule of all the courts [e], "a demand of plea may be made at the time when "the declaration is delivered, and may be indorsed thereon."

At what time judgment may be signed, after demand of plea.

Prac. 477.

The plaintiff, in the King's Bench, could not formerly have signed judgment, for want of a plea, till the expiration of *twenty-four* hours after it had been demanded, whether the time for pleading were or were not expired when such demand was made [f]; and, in that court, if a plea were demanded on *Saturday*, the defendant had *twenty-four* hours to plead, after the demand, exclusive of *Sunday* [g]: but judgment might have been signed at any time after the *twenty-four* hours were expired, provided the time for pleading were then out; and therefore, if the plea had been demanded in the morning, the plaintiff was not obliged to wait until the opening of the office, in the afternoon of the following day [h]. In the Common Pleas, the rule was, that after a plea had been demanded, the defendant had in all cases till the opening of the office, in the afternoon of the following day, to plead; and if he did not plead within that time, the rule to plead being expired, the plaintiff might have signed judgment [i]: And accordingly, by a late rule of all the courts [k], "judg- "ment for want of a plea, after demand, may in all cases be signed "at the opening of the office, in the afternoon of the day after that "on which the demand was made, but not before."

[a] 6 Durnf. & E. 689. 1 Dowl. & R. 186.

[b] 5 East, 547.

[c] Barnes, 276.

[d] 4 Taunt. 51.

[e] R. H. 2 W. IV. *reg.* I. § 43.

[f] 1 Blac. Rep. 50. 1 Durnf. & E. 454. 4 Durnf. & E. 118.

[g] 4 Durnf. & E. 557.

[h] 1 Durnf. & E. 454.

[i] Cas. Pr. C. P. 17, 19. 54.

[k] R. H. 2 W. IV. *reg.* I. § 66.

CHAP. XIX.

Of MOTIONS, *and* RULES; AFFIDAVITS; SERVICE *of* RULES, &c.; *and* SUMMONSES *and* ORDERS.

Side-bar rules may be obtained on last day of term.
Prac. 484. 498.

THE last day of term was not formerly considered to be a day for side bar rules, in the King's Bench; though it seems to have been otherwise in the Common Pleas: and, in the King's Bench, if the party were entitled to such a rule before, he might have taken it out on the last day of term, or in vacation, dated as of the last day but one of the term: But, by a late rule of all the courts [a], "side-"bar rules may be obtained on the last, as well as on other days in "term."

Notice of motion unnecessary, for judgment as in case of nonsuit.
Prac. 491. 765, 6.

The statute 14 Geo. II. c. 17. §. 1. requires *notice* of motion, for judgment as in case of nonsuit: In the King's Bench, the rule to shew cause was formerly considered a sufficient notice of itself [b]; though it was otherwise in the Common Pleas [c]: And now, by a late rule of all the courts [d], "a rule *nisi* for judgment as in case of "a nonsuit may be obtained on motion, without previous notice; but "in that case, it shall not operate as a stay of proceedings."

Affidavits sworn before attorney in country, or attorney's clerk, not to be received.
Prac. 494.

By the general practice of all the courts, affidavits sworn before the attorney or solicitor in the cause, cannot be read [e]; and this practice extends to affidavits taken before attornies, as commissioners, in causes wherein they are concerned for the parties on whose behalf such affidavits are made; except where they are made for the purpose of holding the defendant to special bail [f]: But the rule which prohibits the swearing of affidavits before the attorney

[a] R. H. 2 W. IV. *reg.* I. § 96.
[b] Lofft, 265.
[c] 1 H. Blac. 527.; and see 2 Taunt. 48.
[d] R. H. 2 W. IV. *reg.* I. § 68.
[e] *Prac.* 494. (*c.*)
[f] R. E. 15 Geo. II. *reg.* II. K. B. R. E. 13 Geo. II. *reg.* I. C. P.

CHAP. XIX. or solicitor in the cause, did not formerly extend to the attorney's clerk; and therefore, an affidavit might have been made before a clerk of the attorney in the cause, if such clerk were empowered to take affidavits [a]. So, in the Common Pleas, if the agent in town were the attorney on record, it was no objection to an affidavit of the party, that it was sworn before his own attorney in the country [b]. But now, by a late rule of all the courts [c], "where an agent in "town, or an attorney in the country, is the attorney on the re- "cord, an affidavit sworn before the attorney in the country shall "not be received; and an affidavit sworn before an attorney's "clerk shall not be received, in cases where it would not be receiv- "able, if sworn before the attorney himself; but this rule shall not "extend to affidavits to hold to bail."

Service of pleadings, summonses, orders, rules, notices, &c. on attornies, in Exchequer. *Prac.* 499, 500.

In the Exchequer of Pleas, all pleadings must formerly have been delivered to, and summonses, orders, rules, notices, and other proceedings, served on the sworn or side clerks, at their seats in the office of Pleas: But, by a late rule of that court [d], "the service of "all pleadings, summonses, orders, rules, notices, and other pro- "ceedings, heretofore served on the sworn or side clerks, at their "seats in the said office of Pleas, shall hereafter be served upon the "attorney or attornies of the adverse party or parties, by delivering "the same to, or leaving the same for him, in the manner therein "mentioned [e]; and that henceforth no entry of any notice shall "be required to be made in any book, to be kept in the said office of "pleas, as heretofore."

Service of rules, orders, and notices, when made. *Prac.* 499, 500.

In the King's Bench, it was a rule [f], that "no rules, orders, or notices, in any cause or matter depending in that court, should be served, nor any proceedings or pleadings delivered or served, later than *ten* of the clock at night; and any service or delivery thereof, after that hour, should be null and void:" but the service of a copy of a writ of *latitat*, &c. was not within this rule [g]. In the Common Pleas it was a rule [h], that "all declarations and pleadings should be delivered, all demands thereof made, and all notices given, before *nine* o'clock in the evening." In the Exchequer of Pleas, by a

[a] 8 Durnf. & E. 638.
[b] 5 Taunt. 89.; and see 8 Taunt. 435.
[c] R. H. 2 W. IV. *reg.* I. § 6.
[d] R. M. 1 W. IV. *reg.* II. § 7. 1 Cromp. & J. 277. 1 Tyr. Rep. 159.
[e] *Ante*, 4.
[f] R. M. 41 Geo. III. K. B. 1 East, 132.
[g] 2 Chit. R. 357. 1 Dowl. & R. 172.
[h] R. E. 10 Geo. II. C. P.

late rule of that court [a], "all notices, summonses, rules, and orders, "shall be so served or delivered as therein mentioned, before *nine* "o'clock in the evening." But, by a late rule of all the courts [b], "service of rules and orders, and notices, if made before *nine* "at night, shall be deemed good; but not if made after that "hour." CHAP. XIX.

On service of rule, not necessary to shew original, unless demanded, or except in cases of attachment. *Prac.* 500.

In the King's Bench, it does not seem to have been formerly necessary to shew the original rule, at the time of service, except in cases of attachment [c]. In the Common Pleas, it seems that, in order to make a perfect service of a rule, the original rule must have been sworn to have been shewn to the party, at the time of serving the copy [d]. But, by a late rule of all the courts [e], "it shall "not be necessary to the regular service of a rule, that the original "rule should be shewn, unless sight thereof be demanded, except in "cases of attachment."

Enlarging rule. *Prac.* 502, 3.

When a rule to shew cause had been served, it was formerly usual to give notice to the counsel for the adverse party, of an intended application to the court for enlarging it; and, in the Common Pleas, the court would not have enlarged a rule for shewing cause, unless notice had been given of motion to enlarge the rule, and affidavit made of such notice [f]: but no notice was necessary, when the rule had not been served: And, by a late rule of all the courts [g], "a rule may be enlarged, if the court think fit, without notice."

Notice of points intended to be insisted upon in special arguments, in C. P. *Prac.* 505. 739.

In the Common Pleas, by a late rule [h], it is ordered, that "in all "special arguments in this court, notice in writing of the points "which are intended to be insisted upon by each of the parties, be "delivered to the judges at their chambers, *two* days before the "day on which the case shall be set down for hearing, either by "marking the points in the margin of the books delivered to the "judges, or on separate paper; and that each of the parties do, "within the same time, leave a copy of such notice at the cham-

[a] R. M. 1 W. IV. *reg.* II. § 9. 1 Cromp. & J. 278, 9. 1 Tyr. Rep. 161.

[b] R. H. 2 W. IV. *reg.* I. § 50.

[c] 6 Maule & S. 230. 1 Chit. R. 466, 7. (a.) S. C.

[d] Barnes, 403. Pr. Reg. 264. S. C.

[e] R. H. 2 W. IV. *reg.* I. § 51.

[f] N. M. 2 Geo. II. C. P. and see Cas. Pr. C. P. 67.

[g] R. H. 2 W. IV. *reg.* I. § 97.

[h] R. T. 11 Geo. IV. 6 Bing. 802.

CHAP. XIX.

" bers of the Lord Chief Justice, to be delivered to the adverse party, " upon his application."

Judge's order, when drawn up on one or more summonses.

Prac. 511.

A judge's order is in some cases drawn up, in default of appearance, on the *first* summons; as for a *supersedeas* to discharge the defendant out of custody, in the King's Bench, for not declaring against him in due time. In general, however, there must formerly have been *three* summonses, and an affidavit of attendance thereon, before the judge would make an order for non-attendance. But, by a late rule of all the courts [a], " it shall not be necessary to issue " more than *two* summonses, for attendance before a judge upon " the same matter; and the party taking out such summonses shall " be entitled to an order, on the return of the *second* summons, un- " less cause is shewn to the contrary." [b]

[a] R. T. 1 W. IV. *reg.* V. 7 Bing. 784. 1 Cromp. & J. 471.

[b] For the form of an affidavit of service of two summonses, and non-attendance thereon, see Append. § 25.

CHAP. XX.

Of SETTING ASIDE, *and* STAYING PROCEEDINGS.

THE application to set aside proceedings for irregularity, should be made as early as possible, or, as it is commonly said, in the first instance [a]: And, by a late rule of all the courts [b], "no application "to set aside proceedings for irregularity shall be allowed, unless "made within a reasonable time; nor if the party applying has "taken a fresh step, after knowledge of the irregularity."

Application to set aside proceedings, for irregularity.
Prac. 513.

In the Common Pleas there is a rule [c], similar to a former one in the King's Bench [d], that "in future, where a rule to shew cause is "obtained, for the purpose of setting aside an annuity or annuities, "the several objections thereto, intended to be insisted upon by the "counsel at the time of making such rule absolute, shall be stated "in the said rule to shew cause."

Rule *nisi*, for setting aside annuity, must state the objections thereto.
Prac. 527.

When error was not brought till it was too late for the bail to surrender, the court of King's Bench, in one case [e], would not stay the proceedings: but, in a subsequent case [f], the proceedings were stayed; the bail undertaking to pay the condemnation money, and the costs in *scire facias*, in *four* days after affirmance. This point, however, is now settled, by a late rule of all the courts [g], by which it is ordered, that "to entitle bail to a stay of proceedings, pending "a writ of error, the application must be made before the time to "surrender is out."

Application to stay proceedings against bail, pending error.
Prac. 533.

[a] 3 Durnf. & E. 7. 1 East, 335. 8 Dowl. & R. 450. 9 Price, 637. *Ante*, 16.

[b] R. H. 2 W. IV. *reg.* I. § 33.

[c] R. M. 10 Geo. IV. C. P. 3 Moore & P. 762. 6 Bing. 347, 8.

[d] R. T. 42 Geo. III. K. B. 2 East, 569.

[e] 1 Str. 443.

[f] 2 Str. 877.

[g] R. H. 2 W. IV. *reg.* I. § 64.

To compel security for costs.
Prac. 537.

The motion for a rule to compel security for costs, should be made in an early stage of the proceedings, or as soon as the defendant can reasonably do it, after knowledge of the fact of the plaintiff's residence abroad [a]. In the King's Bench and Exchequer, however, the application might formerly have been made at any time before *plea* pleaded [b]; though, in the latter court, an order for time to plead had been previously obtained [c]: but it was not allowed, in either of these courts, after *issue* joined [d]. In the Common Pleas, the secondary, in one case [e], certified, that the motion requiring a plaintiff to give security for costs, on account of his being resident abroad, might be made after issue joined; but, in a subsequent case [f], it was certified, that such motion must be made before plea pleaded: And now, by a late rule of all the courts [g], "an application to compel the plaintiff to give security for costs, must, in ordinary cases, be made before issue joined."

[a] 2 Chit. R. 151. (*a*.)

[b] 2 Chit. R. 151. K. B. 2 Cromp. & J. 87. Excheq.

[c] 2 Cromp. & J. 87.

[d] 5 East, 338. 2 Chit. R. 359. 1 Dowl. & R. 348. (*a*.) 5 Barn. & Ald. 702. 1 Dowl. & R. 348. S. C. K. B. 5 Price, 610. 1 M'Clel. & Y. 213. Excheq.

[e] 1 Marsh. 4, 5.

[f] 1 Moore & P. 30.

[g] R. H. 2 W. IV. *reg.* I. § 98.

CHAP. XXI.

Of WARRANTS *of* ATTORNEY, *to* CONFESS JUDGMENT; *and* COMPOUNDING PENAL ACTION.

Attorney's presence necessary, on giving warrant of attorney, by prisoner. *Prac.* 548, 9.

WHEN the defendant is in custody by arrest, it is a rule in the courts of King's Bench and Common Pleas [a], that "no bailiff or sheriff's officer shall presume to exact or take from him any warrant to acknowledge a judgment, but in the presence of an attorney for the defendant, who shall subscribe his name thereto; which warrant shall be produced, when the judgment is acknowledged." But it having been deemed sufficient for the *plaintiff's* attorney to be present, and subscribe the warrant, as attorney for the defendant [b], another rule was made, in the King's Bench [c], that "no warrant of attorney executed by any person in custody of a sheriff, or other officer, for the confessing of judgment, shall be valid or of any force, unless there be present some attorney on the behalf of such person in custody, to be expressly named by him, and attending at his request, to inform him of the nature and effect of such warrant of attorney, before the same is executed; which attorney shall subscribe his name as a witness to the due execution thereof": And accordingly, by a late rule of all the courts [d], "no warrant of attorney to confess judgment, given by any person in custody of a sheriff, or other officer, upon *mesne* process, shall be of any force, unless there be present some attorney on behalf of such person in custody, expressly named by him, and attending at his request, to inform him of the nature and effect of such warrant, before the same is executed; which attorney shall subscribe his name as a witness to the due execution thereof, and declare himself to be attorney for the defendant, and state that he subscribes as such attorney."

[a] R. E. 15 *Car.* II. *reg.* II. K. B. R. H. 14 & 15 *Car.* II. *reg.* IV. C. P.

[b] 2 Str. 1245.

[c] R. E. 4 Geo. II. K. B. 2 Str. 902. Cowp. 281.

[d] R. H. 2 W. IV. *reg.* I. § 72.

Leave to enter up judgment on old warrant of attorney, how obtained.

Prac. 484, 5, 6. (*y.*) 553.

In the King's Bench, if the warrant of attorney were above a year old, application must formerly have been made to the court in term time, or, if it were not above *ten* years old, to a judge in vacation, for leave to enter up judgment thereon [a]; but if it were above *ten* years old, the application must have been made to the court, as a judge would not make an order in vacation [a]; and where it was above *twenty* years old, there must in general have been a rule to shew cause [b], founded on an affidavit, stating facts which rebutted the presumption of payment [c]. In the Common Pleas, if a warrant of attorney were above *one*, and under *ten* years old, leave to enter judgment thereon might have been given on a side-bar or treasury rule [d]; but if it were above *ten* years old, the court must have been moved for leave to enter up judgment [d]: If the warrant of attorney were under *twenty* years old, the common affidavit of the due execution of the warrant, that the debt was unpaid, and parties living, was deemed sufficient to induce the court to grant an absolute rule; but if the warrant were above *twenty* years old, the rule must have been to shew cause, and served on the defendant [e]. And now, by a late rule of all the courts [f], "leave to enter up judgment "on a warrant of attorney, above *one* and under *ten* years old, must "be obtained by a motion in term, or by order of a judge in vaca-"tion; and if *ten* years old or more, upon a rule to shew cause."

Compounding penal actions.

Prac. 557.

In the Common Pleas, where part of the penalty went to the crown, it was formerly usual to give notice to the solicitor to the treasury, and the consent of one of the king's counsel or serjeants must have been obtained, before the motion could have been granted, for leave to compound a penal action [g]: And, by a late rule of all the courts [h], "leave to compound a penal action shall not be given, "in cases where part of the penalty goes to the crown, unless no-"tice shall have been given to the proper officer; but in other "cases, it may."

[a] Imp. K. B. 10 Ed. 433.

[b] 1 Chit. R. 618. *in notis.*

[c] 2 Barn. & C. 555. 4 Dowl. & R. 5. S. C.

[d] Barnes, 47.

[e] *Id. ibid.*; and see Cas. Pr. C. P. 145, 6.

[f] R. H. 2 W. IV. *reg.* I. § 73.

[g] 1 Taunt. 103. 5 Taunt. 268.

[h] R. H. 2 W. IV. *reg.* I. § 99.

CHAP. XXII.

Of the COGNOVIT ACTIONEM; *and* PROCEEDINGS *on* JUDGMENTS *by* DEFAULT.

IN the King's Bench, a *cognovit* given by a defendant in custody on *mesne* process, was valid, although no attorney was present on the part of the defendant, unless it were shewn that some undue advantage was taken of him [a]. But, in the Common Pleas, if a *cognovit* were given by a prisoner in custody of a sheriff's officer, it seems that an attorney must have been present on behalf of the defendant, to attest the execution of it [b]; and where a defendant, on being arrested by a sheriff's officer, gave a *cognovit* to the plaintiff, who was attorney in the cause, without an attorney being present on his part, such *cognovit* was holden to be void, by the court of Common Pleas, though the plaintiff swore he did not know that the defendant was in custody [c]: And now, by a late rule of all the courts [d], "no *cognovit actionem* given by any person in custody of "the sheriff, or other officer, upon *mesne* process, shall be of any "force, unless there be present some attorney on behalf of such "person in custody, expressly named by him, and attending at his "request, to inform him of the nature and effect of such *cognovit*, "before the same is executed; which attorney shall subscribe his "name as a witness to the due execution thereof, and declare him-"self to be attorney for the defendant, and state that he sub-"scribes as such attorney."

Attorney's presence necessary, on giving *cognovit*, by prisoner. *Prac.* 550. 560.

When the confession is after plea pleaded, the defendant's attorney, or his clerk, used formerly to come in person before the Master,

Withdrawing plea, on confessing the action. *Prac.* 560.

[a] 1 Chit. R. 267.; and see 2 Cromp. & J. 86. (*a.*)

[b] 2 Taunt. 360. 7 Taunt. 701. 1 Moore, 428. S. C. 7 Taunt. 703. (*a.*)

[c] 7 Taunt. 701. 1 Moore, 428. S. C.; and see 2 Taunt. 360. Arnold v. Lowe, T. 57 Geo. III. C. P. 7 Taunt. 703. (*a.*)

[d] R. H. 2 W. IV. *reg.* I. § 72.

CH. XXII. to withdraw it, in the King's Bench [a]; but this was deemed unnecessary in the Common Pleas [b]: And, by a late rule of all the courts [c], "where the defendant, after having pleaded, is allowed "to confess the action, he may withdraw his plea in person, with- "out the appearance of the attorney, or his clerk, for that purpose, "before the officer of the court."

Good jury, on inquiry.
Prac. 484. 486. 576. 787.

When the writ of inquiry was to be executed before the chief-justice, or a judge of assize, it was formerly usual to move the court, for the sheriff to return a good jury: But, by a late rule of all the courts [d], "there shall be no rule for the sheriff to return a good "jury, upon a writ of inquiry; but an order shall be made by a "judge upon summons, for that purpose."

Notice of inquiry must be given in town.
Prac. 97. 576.

In the Common Pleas, it seems that notice of inquiry might formerly have been given either to the attorney in the country, or to the agent in town [e]: But, by a late rule of all the courts [f], "no- "tice of inquiry shall be given in town."

Term's notice of inquiry, when given.
Prac. 577.

A term's notice of inquiry might formerly have been given, in the King's Bench, before the *first* day in full term [g]: In the Common Pleas, it must have been given before the *essoign* day of the *fifth*, or other subsequent term [h]: But, by a late rule of all the courts [i], "where a term's notice of inquiry is required, such notice may be "given at any time before the *first* day of term."

Notice of inquiry, where defendant, after notice of trial, lets judgment go by default, or demurs to declaration, &c.
Prac. 578, 9.

There were formerly different rules, in the King's Bench [k], Common Pleas [l], and Exchequer of Pleas [m], as to the notice of inquiry, where the defendant, after notice of trial, suffered judgment to go by default, or demurred to the declaration, replication, or other subsequent pleading; or in case the defendant pleaded a plea in bar,

[a] 1 Ld. Raym. 345. Imp. K. B. 10 Ed. 422.
[b] Imp. C. P. 7 Ed. 439.
[c] R. H. 2 W. IV. *reg.* I. § 100.
[d] *Id.* § 101.
[e] Barnes, 305.
[f] R. H. 2 W. IV. *reg.* I. § 57.
[g] Imp. K. B. 10 Ed. 412.
[h] R. E. 13 Geo. II. C. P.
[i] R. H. 2 W. IV. *reg.* I. § 52.
[k] R. H. 8 Geo. I. K. B.
[l] R. H. 6 Geo. I. *reg.* I. R. T. 10 Geo. I. C. P.
[m] R. T. 26 & 27 Geo. II. § 4. Man. Ex. Append. 211.

or rejoinder, &c., to which the plaintiff demurred: But now, by a late rule of all the courts [a], "in all cases where the plaintiff in "pleading concludes to the country, the plaintiff's attorney may "give notice of trial, at the time of delivering his replication, or "other subsequent pleading; and in case issue shall afterwards be "joined, such notice shall be available; but if issue be not joined "on such replication, or other subsequent pleading, and the plaintiff "shall sign judgment for want thereof, and forthwith give notice "of executing a writ of inquiry, such notice shall operate from the "time that notice of trial was given as aforesaid: and in all cases "where the defendant demurs to the plaintiff's declaration, repli-"cation, or other subsequent pleading, the defendant's attorney, or "the defendant if he plead in person, shall be obliged to accept "notice of executing a writ of inquiry, on the back of the joinder "in demurrer; and in case the defendant pleads a plea in bar, or "rejoinder, &c., to which the plaintiff demurs, the defendant's at-"torney, or the defendant if he plead in person, shall be obliged to "accept notice of executing a writ of inquiry, on the back of such "demurrer."

Continuance, or countermand, of notice of inquiry, where given.
Prac. 97. 580.

In the King's Bench the continuance, or countermand, of notice of inquiry must formerly have been delivered to the agent in town, and not to the attorney in the country [b]: But now, by a late rule of all the courts [c], "notice of continuance of inquiry shall be given "in town; but countermand of notice of inquiry may be given either "in town or country, unless otherwise ordered by the court, or a "judge."

Rule for judgment unnecessary, on writ of inquiry.
Prac. 581. 903.

On the return day of the writ of inquiry, the plaintiff, in the King's Bench, must formerly have given a rule for judgment with the clerk of the rules, which expired in *four* days [d]. In the Common Pleas, there was no rule for judgment given on the return of the inquiry, but the plaintiff's attorney waited *four* days after the return-day, inclusive of both days; after which, the inquisition being previously obtained from the sheriff, the prothonotaries would tax the costs thereon [e]. And now, by a late rule of all the courts [f],

[a] R. H. 2 W. IV. *reg.* I. § 59.
[b] Imp. K. B. 10 Ed. 615.
[c] R. H. 2 W. IV. *reg.* I. § 57.
[d] 1 Salk. 399.
[e] Imp. C. P. 7 Ed. 487.
[f] R. H. 2 W. IV. *reg.* I. § 67.

CH. XXII. "after the return of a writ of inquiry, judgment may be signed, at "the expiration of *four* days from such return, without any rule "for judgment.

CHAP. XXIII.

Of OYER, *and* COPY *of* DEEDS, &c.; INSPECTION *of* COURT ROLLS; *and* PARTICULARS *of* DEMAND, *and* SET-OFF.

Inserting *oyer* of deed, at head of plea.

Prac. 589.

WHEN the defendant, having demanded *oyer* of a deed, did not insert it at the head of his plea, the plaintiff, in the Common Pleas, might have inserted it there for him, in making up the issue, or demurrer-book [a]: In the King's Bench, it was otherwise [b]: But, by a late rule of all the courts [c], "if a defendant, after craving *oyer* of a "deed, omit to insert it at the head of his plea, the plaintiff, on "making up the issue or demurrer-book, may, if he think fit, insert "it for him; but the costs of such insertion shall be in the discretion "of the taxing officer."

Rule for copyhold tenant to inspect court rolls.

Prac. 485, 6. 486. (*a.*) 487, 8. 594, 5.

In the King's Bench, if the rule to inspect court rolls were moved for on behalf of a copyhold tenant, it was absolute in the first instance [d]; otherwise, it was only a rule *nisi* [e]: In the Common Pleas, it was always a rule to shew cause: But, by a late rule of all the courts [f], "an order upon the lord of a manor, to allow the usual "limited inspection of the court rolls, on the application of a copy-"hold tenant, may be absolute in the first instance, upon an affidavit

[a] Barnes, 327.

[b] 2 Str. 1241. 1 Wils. 97.; and see Steph. *Pl.* 88, 9.

[c] R. H. 2 W. IV. *reg.* I. § 44.

[d] 3 Durnf. & E. 141.

[e] 7 Durnf. & E. 746.; and see 5 Dowl. & R. 484.

[f] R. H. 2 W. IV. *reg.* I. § 102.

"that the copyhold tenant has applied for and been refused in-
"spection."

The summons for particulars of the plaintiff's demand, might formerly have been taken out, and an order obtained thereon, in the King's Bench, before the defendant had appeared [a]; and there was a rule in the Common Pleas [b], by which the practice in this respect was made conformable to that of the court of King's Bench: In the Exchequer, however, the defendant could not have an order for particulars of the plaintiff's demand, except by consent, unless he made an affidavit, that he had never had the particulars, or that he had mislaid them, or that he was not sufficiently acquainted with the particulars, and that therefore he was advised he could not safely proceed to trial without them [c]: But, by a late rule of all the courts [d], "a "summons for particulars, and order thereon, may be obtained by a "defendant, before appearance; and may be made, if the judge "think fit, without the production of any affidavit."

Summons and order for particulars may be obtained before appearance.

Prac. 596.

By a late rule of all the courts [e], it is ordered, that "with every "declaration, if *delivered*, or with the notice of declaration, if *filed*, "containing counts in *indebitatus assumpsit*, or *debt* on simple con-"tract, the plaintiff shall deliver *full* particulars of his demand "under those counts [f], where such particulars can be comprised with-"in *three* folios; and where the same cannot be comprised within "*three* folios, he shall deliver such a *statement* [g] of the nature of "his claim, and the amount of the sum or balance which he claims "to be due, as may be comprised within that number of *folios*: "And, to secure the delivery of particulars in all such cases, it is "further ordered, that if any declaration or notice shall be delivered "without such particulars, or such statement as aforesaid, and a "judge shall afterwards order a delivery of particulars, the plaintiff "shall not be allowed any costs in respect of any summons for the "purpose of obtaining such order, or of the particulars he may af-

When particulars are required, by R. T. 1 W. IV.

Prac. 597.

Consequence of not delivering them.

[a] 1 Chit. R. 724, 5. (*a.*)

[b] R. T. 2 Geo. IV. C. P. 6 Moore, 211.

[c] Dax Pr. 59.; and see Price Pr. 309, 10.

[d] R. H. 2 W. IV. *reg.* I. § 47.

[e] R. T. 1 W. IV. *reg.* II. 7 Bing. 783. 1 Cromp. & J. 470, 71.

[f] Append. § 26.

[g] *Id.* § 27.

Copy of particulars of demand, or set off, to be annexed to record.

"terwards deliver[a]; and that a copy of the particulars of the de- "mand, and also particulars, if any, of the defendant's set off[b], "shall be annexed by the plaintiff's attorney to every record, at "the time it is entered with the judge's marshal."

[a] This rule is not, it seems, imperative on the plaintiff to deliver particulars, or a statement of his demand, with the declaration; though, if he omit to deliver such particulars or statement, he will not be allowed for them in costs, if afterwards called for and delivered.

[b] Append. § 28.

CHAP. XXIV.

Of CHANGING *the* VENUE.

Rule to change the venue. *Prac.* 484. 486. 488. 608., &c.

IN the King's Bench, the rule to change the venue is absolute in the first instance: In the Common Pleas and Exchequer, it was formerly only a rule to shew cause: But, by a late rule of all the courts[a], "in cases where the application for a rule to change the "venue is made upon the usual affidavit only, the rule shall be ab- "solute in the first instance, and the venue shall not be brought "back, except upon an undertaking of the plaintiff, to give ma- "terial evidence in the county in which the venue was originally "laid."

[a] R. H. 2 W. IV. reg. I. § 103.

CHAP. XXV.

Of PAYING MONEY *into* COURT.

THE rule for paying money into court, in the King's Bench, was formerly drawn up by the clerk of the rules in term time, or within a week after, on a motion paper signed by counsel; but after a week from the end of the term, there must have been a judge's order for drawing up the rule, which was granted of course, without a summons. In the Common Pleas, if the sum were under *five* pounds, it might have been paid in on a side-bar or treasury rule, which was granted of course by the secondaries; but if it amounted to that sum or upwards, a serjeant's hand was necessary for obtaining the rule; and after a week from the end of the term, there must also have been a judge's order for drawing it up. But, by a late rule of all the courts[a], "in all cases in which money may be paid into "court, leave to pay it in may be obtained by a side-bar rule."

Rule for paying money into court.

Prac. 484, 5. 622.

When money was paid into court, if the plaintiff were willing to accept it, with costs, in discharge of the action, and they were not paid, he might formerly have proceeded in the action; and proof of the rule to pay money into court, would of itself have entitled him to a verdict, with nominal damages[b]: Or, in the Common Pleas and Exchequer, the plaintiff, after demanding the costs, might have had an attachment for the non-payment of them; or, in these courts, he might have proceeded in the action, without a previous demand of the costs[c]. In the King's Bench, however, the plaintiff must have proceeded in the action, if they were not paid, and could not have had an attachment[d]; for the rule in that court was conditional, and not, as in the Common Pleas[e], obligatory upon the defendant

Form of rule.

Prac. 626, 7.

[a] R. H. 2 W. IV. *reg.* I. § 55.

[b] 1 Campb. 558. *n.*

[c] 2 New Rep. C. P. 473. 6 Price, 126. 7 Price, 674.

[d] 2 Str. 1220. 7 Durnf. & E. 6.

[e] Barnes, 283. Pr. Reg. 259. 8 C. 11 East, 319.

CH. XXV. to pay the costs: But, by a late rule of all the courts [a], "on pay-
"ment of money into court, the defendant shall undertake by the
"rule, to pay the costs; and in case of non-payment, to suffer the
"plaintiff either to move for an attachment, on a proper demand
"and service of the rule, or to sign final judgment for nominal
"damages."

Costs where money is paid into court, in actions which are consolidated. *Prac.* 628.

In the King's Bench, where the defendants, in several actions on a policy of insurance, paid money into court, which the plaintiff took out, without taxing costs at that time, and afterwards the defendants entered into the common consolidation rule, and the plaintiff was nonsuited in the action that was tried; the court held, that the latter was not entitled to costs in any of the actions, up to the time of paying money into court [b]: But, in the Common Pleas, where there was a consolidation rule, and money paid into court, although the cause tried followed the general practice, and the defendant, if he succeeded, was entitled to the whole costs of that cause, yet the plaintiff was entitled to the costs of the short causes, up to the time when the money was paid in [c]: And accordingly, by a late rule of all the courts [d], "where money is paid into court in several ac-
"tions which are consolidated, and the plaintiff, without taxing
"costs, proceeds to trial on one, and fails, he shall be entitled to
"costs on the others, up to the time of paying money into court."

[a] R. H. 2 W. IV. *reg.* I. § 56.
[b] 7 Durnf. & E. 372.
[c] 2 Taunt. 361.; and see 2 Bos. & P. 56. 3 Bos. & P. 556. *accord.*
[d] R. H. 2 W. IV. *reg.* I. § 104.

CHAP. XXVI.

Of PLEADING *to the* JURISDICTION, *or in* ABATEMENT, &c.

PLEAS to the jurisdiction of the court [a], and in abatement [b], must formerly have been pleaded within *four* days *inclusive* [c] after the delivery, or filing and notice, of the declaration [d]; unless the declaration were delivered or filed after term, or so late in the term, that the defendant was not bound to plead to it in that term; in both which cases, the defendant, in the King's Bench, might, within the first *four* days *inclusive* of the next term, have pleaded to the jurisdiction of the court, or in abatement, as of the preceding term [e]. In the Common Pleas, however, the defendant could not have pleaded in abatement, within the first *four* days of the next term, without a special imparlance, which was granted by the prothonotaries [f]. But now, by a late rule of all the courts [g], "if "the declaration be filed or delivered so late, that the defendant is "not bound to plead until the next term, the defendant may plead, "as of the preceding term, within the first *four* days of the next "term, any plea to the jurisdiction, or in abatement, or a tender, or "any other similar plea."

Time for pleading to the jurisdiction, or in abatement, &c.
Prac. 463. 638, 9.

[a] *Prac.* 638. (*p.*)
[b] *Id.* (*q.*)
[c] 1 Durnf. & E. 277. 5 Durnf. & E. 210.
[d] *Prac.* 639. (*b.*)
[e] 1 Salk. 367. Gilb. K. B. 344, 5.; and see 3 Barn. & Ald. 259. 1 Chit. R. 704. S. C.
[f] Pr. Reg. 1. Cas. Pr. C. P. 78. Barnes, 224. S. C. *Id.* 334. S. P.
[g] R. H. 2 W. IV. *reg.* I. § 45.

CHAP. XXVII.

Of PLEADING SEVERAL MATTERS; *and* SIGNING PLEADINGS, &c.

Leave to plead several matters, how formerly obtained, in K. B.

Prac. 484, 5, 6. 488. 657, 8.

IN order to plead two or more matters, in the King's Bench, it was not formerly necessary that an *affidavit* should be made of the facts; but the court expected to be informed what the matters were that were desired to be pleaded, in order to judge whether they were proper [a]: Afterwards, the motion for leave to plead several matters became, in that court, a mere motion of course, which only required counsel's signature: and the motion paper being delivered to the clerk of the rules, he drew up a rule absolute thereon. In the Common Pleas, the rule to plead several matters was drawn up by the secondaries; and formerly they were allowed, in certain cases, to draw it up, as a matter of course, on a brief or motion paper signed by a serjeant; but in other cases there must have been a rule to shew cause, why the defendant should not have leave to plead the several matters intended to be pleaded; which rule was drawn up by the secondaries, on a brief or motion paper signed by a serjeant: But now, by a late rule of all the courts [b], it is ordered, that "no rule to shew cause, or motion shall be required, in order "to obtain a rule to plead several matters, or to make several avow-"ries or cognizances; but that such rules shall be drawn up, upon "a judge's order [c], to be made upon a summons [d], accompanied by "a short abstract or statement of the intended pleas, avowries, or "cognizances [e]: Provided, that no summons or order shall be ne-"cessary in the following cases, that is to say, where the plea of "*non assumpsit*, or *nil debet*, or *non detinet*, with or without a plea of

In C. P.

[a] R. T. 5 & 6 Geo. II. (*b.*) K. B.

[b] R. T. 1 W. IV. *reg.* IX. 7 Bing. 784, 5. 1 Cromp. & J. 472.

[c] Append. § 31.

[d] *Id.* § 29.

[e] *Id.* § 30.

"tender as to part, a plea of the statute of limitations, set off, "bankruptcy of the defendant, discharge under an insolvent act, "*plene administravit, plene administravit præter*, infancy, and co-"verture, or any two or more of such pleas, shall be pleaded to-"gether; but in all such cases a rule shall be drawn up by the pro-"per officer, upon the production of the engrossment of the pleas, "or a draft or copy thereof."

Consequence of pleading several matters without leave.

Prac. 566, 7. 658.

In the King's Bench, if several pleas were filed to the whole or part of a declaration, without a rule to plead several matters being drawn up, or instructions given for it to the clerk of the rules, they were formerly considered as a nullity, and the plaintiff might have signed judgment [a]: In the Common Pleas, it seems that the practice in such case was for the defendant to apply to the court, to strike out one of them [b]: But now, by a late rule of all the courts [c], "if a party plead several pleas, avowries, or cognizances, without a "rule for that purpose, the opposite party shall be at liberty to sign "judgment."

Signing pleadings.

Prac. 672, 3. 693.

In the King's Bench, when the plea or replication, &c. concluded to the country, it was not necessary that it should be signed by counsel; and, in that court, a plea of bankruptcy in the defendant, which concludes to the country, need not have been signed by counsel [d]; although it must have been signed by a serjeant, in the Common Pleas [e]: and in the latter court, it was holden, that a tender of an issue in fact must be signed by a serjeant, but a joinder in issue need not [f]. By a late rule, however, of all the courts [g], "it "shall not be necessary that any pleadings, which conclude to the "country, be signed by counsel."

Waiving plea.

Prac. 673.

In the King's Bench, the defendant was formerly allowed to waive the general issue, if it were not entered, and plead specially, without leave of the court, in *four* days [h]; or, as it should seem, before the adjournment day of the term [i], or within the first *five*

[a] *Per Buller*, J., in Bedford & Gatfield, H. 26 Geo. III. K. B.

[b] 1 Bos. & P. 415.

[c] R. H. 2 W. IV. *reg.* I. § 34.

[d] 6 Durnf. & E. 496. 1 Chit. R. 225.

[e] 3 Bos. & P. 171.

[f] 1 Bos. & P. 469. 3 Bos. & P. 171.

[g] R. H. 2 W. IV. *reg.* I. § 107.

[h] 1 Ld. Raym. 674. 3 Salk. 211. 274. S. C.

[i] Say. Rep. 87.

CHAP. XXVII.

days of the ensuing term [a]: But, by a late rule of all the courts [b], "the defendant shall not be at liberty to waive his plea, without "leave of the court or a judge."

[a] *Prax. utr. Banci*, 37. R. T. 5 & 6 Geo. II. (4.) K. B.

[b] R. H. 2 W. IV. *reg.* I. § 46.

CHAP. XXVIII.

Of the RULE *to* REPLY; JUDGMENT *of* NONPROS, *for not* REPLYING; *and* DISCONTINUANCE.

Rule to reply, when given. *Prac.* 483. 676.

IN the King's Bench [a], and Exchequer [b], the rule to reply must formerly have been given in term, or within *sixteen* days after: But, by a late rule of all the courts [c], "a rule to reply may be given "at any time, when the office is open."

Judgment of *nonpros*, for not replying, &c. *Prac.* 676. 693.

If the plaintiff did not reply, surrejoin, or surrebut, &c. within the time limited by the rule, or obtain an order for further time, the defendant might formerly have signed a judgment of *nonpros*: And it was not necessary for him, in the King's Bench, to demand a replication, &c.; the service of the copy of the rule being deemed in that court a demand of itself [d]. In the Common Pleas, a replication, &c. must have been demanded in writing, by the defendant's attorney, before judgment was signed [e]: And, by a late rule of all the courts [f], "no judgment of *nonpros* shall be signed for want of "a replication, or other subsequent pleading, until *four* days next "after a demand thereof shall have been made in writing, upon the "plaintiff, his attorney or agent, as the case may be. Service of a

[a] Imp. K. B. 10 Ed. 264.

[b] R. H. 16 Geo. III. *in Scac.* Man. Ex. Append. 220.

[c] R. H. 2 W. IV. *reg.* I. § 53.

[d] Imp. K. B. 10 Ed. 263.

[e] Imp. C. P. 7 Ed. 294, 5.

[f] R. T. 1 W. IV. *reg.* IV. 7 Bing. 784. 1 Cromp. & J. 471.

"rule to reply however, or plead any subsequent pleading, shall, (by a subsequent rule [a],) "be deemed a sufficient demand of a repli- "cation, or such other subsequent pleading."

Entry of continuances, after judgment by default, unnecessary. *Prac.* 678.

After judgment by default, and writ of inquiry awarded, there was no subsequent continuance between the parties, in the Common Pleas [b]: In the King's Bench, it was otherwise: But now, by a late rule of all the courts [c], "after judgment by default, the entry of any subsequent continuances shall not be required."

Rule to discontinue. *Prac.* 484. 680.

The rule to discontinue is a side bar or treasury rule, obtained from the clerk of the rules in the King's Bench, or secondaries in the Common Pleas; but in the latter court, if it were after plea pleaded, the defendant's attorney must formerly have consented to a rule in the treasury chamber, in term time, or before a judge in vacation [d]; or else there must have been a rule to shew cause. But, by a late rule of all the courts [e], "to entitle a plaintiff to discon- "tinue after plea pleaded, it shall not be necessary to obtain the "defendant's consent; but the rule shall contain an undertaking "on the part of the plaintiff, to pay the costs, and a consent that "if they are not paid within *four* days after taxation, defendant "shall be at liberty to sign a *nonpros*."

[a] R. H. 2 W. IV. *reg.* I. § 54.

[b] 11 Co. 6. *b.* Yelv. 97. 1 Rol. Abr. 486. *pl.* 7.

[c] R. H. 2 W. IV. *reg.* I. § 105.

[d] Imp. C. P. 7 Ed. 723.

[e] R. H. 2 W. IV. *reg.* I. § 106.

CHAP. XXX.

Of MAKING UP, *and* ENTERING *the* ISSUE.

Making up issue, without giving rule to rejoin.
Prac. 483. 718.

FORMERLY, when the plaintiff in his replication concluded to the country, or demurred, the issue, in the King's Bench, could not have been made up till a *four* day rule had been given and expired, to rejoin, or join in demurrer; but the practice in this respect was afterwards altered, and it was settled that in all special pleadings, where the plaintiff took issue upon the defendant's pleading, or traversed the same, or demurred, so as the defendant was not let in to allege any new matter, the plaintiff might make up the paper book, without giving a rule to rejoin [a]; but otherwise a rule must have been given for that purpose, unless the defendant was bound by a judge's order to rejoin *gratis*. In the Common Pleas, when the plaintiff's replication concluded to the country, he could not regularly have made up the issue, without previously giving a *four* day rule to rejoin, unless the defendant were under terms of rejoining *gratis*. But, by a late rule of all the courts [b], "in all special pleadings, where the plaintiff takes issue on "the defendant's pleading, or traverses the same, or demurs, so that "the defendant is not let in to allege any new matter, the plaintiff "may proceed, without giving a rule to rejoin."

Entry of imparlances.
Prac. 720.

There is no *imparlance* roll in the King's Bench: But, in the Common Pleas, when an original was actually issued in the first instance, (which however was seldom the case,) or the proceedings were by *bill* filed against an attorney, or member of the House of Commons, if the defendant were entitled to an imparlance, it was formerly entered on a roll, called the *imparlance* roll, which was made up of the term the original writ was returnable, or bill filed; and contained an entry of the declaration or bill, and of the de-

[a] R. T. 1 Geo. II. (a.) K. B.

[b] R. H. 2 W. IV. *reg.* I. § 108.

fendant's appearance thereto, with the prayer and grant of an imparlance [a]. But now, by a late rule of all the courts [b], "it shall not "be necessary that imparlances should be entered on any distinct "roll."

[a] 1 Wils. 183.

[b] R. H. 2 W. IV. *reg.* I. § 109.

CHAP. XXXI.

Of DEMURRER BOOKS.

Making up demurrer books, when part only of declaration, &c. is demurred to.

Prac. 739.

IT being found, that great expense was often unnecessarily incurred, in making up demurrer books, from setting forth those parts of the pleadings to which the demurrers did not apply; a rule was made in the King's Bench [a], that "when there shall be a demurrer "to part only of the declaration, or other subsequent pleadings, "those parts only of the declaration and pleadings, to which such "demurrer relates, shall be copied into the demurrer books; and "if any other parts shall be copied, the Master shall not allow "the costs thereof on taxation, either as between party and party, "or as between attorney and client:" And there is a similar rule in the Common Pleas [b], and Exchequer [c].

[a] R. H. 8 & 9 Geo. IV. K. B. 7 Barn. & C. 642.

[b] R. H. 8 & 9 Geo. IV. C. P. 1 Moore & P. 401. 4 Bing. 549, 50.

[c] R. M. 9 Geo. IV. Exchcq. 2 Younge & J. 530.

CHAP. XXXIII.

Of TRIALS *at* BAR, *or* NISI PRIUS; NOTICE *of* TRIAL, &c.; TRIAL *by* PROVISO; COSTS *for not proceeding to* TRIAL; *and* JUDGMENT *as in case of a* NONSUIT, &c.

Notice of trial at bar, to officer of court.
Prac. 750.

IN the Common Pleas, it was formerly a rule, that the plaintiff's attorney must, before the essoign day of the term in which the cause was appointed to be tried at bar, give notice to the chief prothonotary, or his secondary, of the day of trial, that the same might be put down in the court book provided for that purpose; and in case of neglect, the cause could not have been tried that term, without motion, and special direction of the court [a]: And, by a late rule of all the courts [b], "notice of trial at bar shall be given to the "proper officer of the court, before giving notice of trial to the "party."

Sitting days for *London* and *Middlesex*, in Exchequer.
Prac. 753.

In the Exchequer of Pleas, there was formerly but one sitting day in term for *London*, and one for *Middlesex* [c]: But, by a late rule of that court [d], it is ordered, "that there shall be *two* days appointed for the trials of causes at *Nisi Prius* in term, in *London*, and the like in *Middlesex*, to be named by the Lord Chief Baron of that court, previous to the commencement of each term; and that, on such nomination, the said Lord Chief Baron shall also appoint the hour at which the court will sit on each of those days." In pursuance of this rule, the days appointed for sittings in term in *London* are on the *sixth*, and last day but two in the term; in *Middlesex* they are on the *seventh*, and last day but one in the term [e]. After term it is a rule, that "the sitting day at *Nisi Prius*, at the

[a] R. H. 9 Ann, *reg.* I. C. P.
[b] R. H. 2 W. IV. *reg.* I. § 60.
[c] Dax Pr. 81.
[d] R. M. 1 W. IV. *reg.* II. § 14. 1 Cromp. & J. 281. 1 Tyr. Rep. 162, 3.; and see R. E. 49 Geo. III. *in Scac.* Man. Ex. Append. 226. 8 Price, 507.
[e] Dax Pr. 82.; and see 1 Cromp. & J. 281. (*b.*)

"*Guildhall* in and for the city of *London*, shall be the *second* day "after every term; and such sitting shall be adjourned until such "day as the court shall then direct."[a] In *Middlesex*, the day of sitting is the *seventh* day after the term[b].

Notice of trial, to whom given, in country causes. *Prac.* 97. 753, 4.

In country causes, the notice of trial, in the King's Bench, must formerly have been given to the agent in town[c]: But, in the Common Pleas, it might have been given either to the agent in town, or to the attorney in the country[d], except where it was given on the back of the issue; in which case, as the issue must have been delivered[e], so the notice of trial must of necessity have been given to the agent in town: But, by a late rule of all the courts[f], "no-"tice of trial shall be given in town."

In Exchequer. *Prac.* 754.

In the Exchequer of Pleas, all notices of trial given by the attornies or side clerks of the office of pleas, in causes instituted there, were formerly required to be entered in the book of orders kept in such office, and a written notice of such entries left at the seat in the said office, of the attorney or clerk in court concerned for the defendant, or at his chambers, or place of residence[g]: But now, by a late rule of that court[h], all notices are required to be given by and to the attornies in the cause.

Notice of trial, in Exchequer, for *London* and *Middlesex*. *Prac.* 755.

By another rule of the Exchequer of Pleas[i], it is ordered, that "all notices of trial, in causes on the plea side of the court, for the "sittings after term in *London* and *Middlesex*, shall, in case the "defendant or defendants reside at a less distance from the cities "of *London* or *Westminster* than *forty* miles, be given *eight* days "before the day appointed by the Lord Chief Baron, for the trial "of the same causes; and in case the defendant or defendants re-"side *forty* miles or upwards therefrom, then such notices of trial "shall be given *fourteen* days before such day appointed by the "Lord Chief Baron as aforesaid; one day being considered *inclu-*

[a] R. H. 1 W. IV. Exchcq. 1 Cromp. & J. 386. 1 Tyr. Rep. 292.

[b] Dax Pr. 82. 1 Cromp. & J. 281. (*b.*)

[c] 3 East, 568.

[d] Barnes, 306.

[e] Cas. Pr. C. P. 94.

[f] R. H. 2 W. IV. *reg.* I. § 57.

[g] R. H. 39 Geo. III. Exchcq. Man. Ex. Append. 223, 4. 8 Price, 503.

[h] R. M. 1 W. IV. *reg.* II. § 7. 1 Cromp. & J. 277. 1 Tyr. Rep. 159.

[i] R. E. 56 Geo. III. *in Scac.* Man. Ex. Append. 227. 4 Price, 4.

For adjournment day in *London*. *Prac.* 755.

"*five* and the other *exclusive*." This rule, however, was altered, as to notices of trial for the *adjournment* day in *London*, by a subsequent rule [a]; by which it is ordered, that "in every notice of trial "thereafter to be given for the sittings after any term, to be holden "at the *Guildhall* aforesaid, it shall be specified whether the cause "is intended to be tried on the first day of such sittings, or at the "adjournment day; and that in every case in which such notice "shall specify that the cause is to be tried at the adjournment day, "it shall be sufficient to give such notice *eight* days before the *first* "day of the sittings after term, if the defendant or defendants re-"side above *forty* miles from the said city of *London*; and *four* "days before the said first day, if the defendant or defendants re-"side within that distance."

Term's notice of trial, when given. *Prac.* 756. 766.

A term's notice of trial must formerly have been given before the essoign day of the *fifth*, or other subsequent term [b]: But, by a late rule of all the courts [c], "where a term's notice of trial is re-"quired, such notice may be given at any time before the *first* "day of term."

Short notice of trial, in country causes. *Prac.* 472. 756, 7.

Short notice of trial, in *country* causes, must formerly have been given, in the King's Bench, *four* days at least before the commission day, one *exclusive* and the other *inclusive* [d]: In the Common Pleas, *two* days' notice seems to have been sufficient [e]: But, by a late rule of all the courts [f], "the expression 'short notice of trial' "shall, in country causes, be taken to mean *four* days."

Countermand of notice of trial, where given. *Prac.* 97. 757.

The countermand of notice of trial might formerly have been given either to the attorney in the *country*, or to the agent in *town* [g]: And accordingly, by a late rule of all the courts [h], "countermand of "notice of trial may be given either in town or country, unless "otherwise ordered by the court, or a judge."

[a] R. H. 1 W. IV. 1 Cromp. & J. 386.

[b] 1 Str. 211. 2 Str. 1164. K. B. Pr. Reg. 391. Barnes, 291. S. C. R. E. 13 Geo. II. C. P. R. T. 26 & 27 Geo. II. § 5. Excheq. Man. Ex. Append. 211, 12.

[c] R. H. 2 W. IV. *reg.* I. § 52.

[d] R. E. 30 Geo. III. K. B. 3 Durnf. & E. 660.

[e] Pr. Reg. 390. Barnes, 301.

[f] R. H. 2 W. IV. *reg.* I. § 56.

[g] 2 Str. 1073. Cas. *temp.* Hardw. 369. S. C. Cas. Pr. C. P. 48, 9. 120. Pr. Reg. 393. Barnes, 298. S. C. *Id.* 306.

[h] R. H. 2 W. IV. *reg.* I. § 57.

By the statute 14 Geo. II. c. 17. § 5, the countermand of notice of trial at the assizes, or in a town cause, where the defendant lives above *forty* miles from *London*, must be given *six* days at least before the intended trial: In other cases, *two* days' notice of countermand is still sufficient, the day of countermand being one, *exclusive* of the commission day, or day of sittings: And accordingly, by a late rule of all the courts [a], "in country causes, or where the defendant "resides more than *forty* miles from town, a countermand of notice "of trial shall be given *six* days before the time mentioned in the "notice for trial, unless short notice of trial has been given:" And, "in *town* causes, where the defendant lives within *forty* miles of "town, *two* days' notice of countermand shall be deemed sufficient." [b]

When given.
Prac. 757.

Before the defendant could have had a trial by *proviso*, the issue must formerly have been entered of record; and therefore, unless this were done, the practice was for the defendant to obtain a rule from the master, which was entered with the clerk of the rules in the King's Bench, or a side-bar or treasury rule from the secondaries in the Common Pleas, for the plaintiff to enter the issue; and if it were not entered, he might have signed a *nonpros* [c]: But, by a late rule of all the courts [d], "no entry of the issue shall be deemed ne-"cessary, to entitle a defendant to take the cause down to trial by "*proviso*."

Entry of issue unnecessary, for trial by *proviso*.
Prac. 760, 61.

Formerly, if the plaintiff had been guilty of *laches*, the defendant, in the King's Bench, might have procured a rule from the master, for a trial by *proviso* [e]; which must have been entered with the clerk of the rules; and might have been had after giving notice of trial [f]: But a rule for this purpose was not necessary in the Common Pleas [g]: And, by a late rule of all the courts [h], "no rule for a "trial by *proviso* shall be necessary."

Rule for, unnecessary.
Prac. 483. 761.

In the Common Pleas, if no notice of trial had been given, the defendant could not formerly have tried the cause by *proviso*, the same term, in *London* or *Middlesex*; but afterwards he might have

When such trial may be had.
Prac. 761.

[a] R. H. 2 W. IV. *reg.* I. § 61.
[b] *Id.* § 62.
[c] 2 Lil. P. R. 84. 87. 612. 615. 617. 3 Salk. 362, 3. R. M. 4 Ann. (c.) K. B. Barnes, 313. C. P.
[d] R. H. 2 W. IV. *reg.* I. § 70.
[e] 2 Str. 1055.
[f] 1 Durnf. & E. 695.
[g] Imp. C. P. 6 Ed. 333. (*a.*)
[h] R. H. 2 W. IV. *reg.* I. § 71.

CHAP. XXXIII.

taken it by *proviso*, according to law [a]: and where notice of trial had been given, it was not necessary that a whole term should intervene, before the cause was tried by *proviso*; but it might have been so tried in the next term after notice of trial [b]: And, by a late rule of all the courts [c], "no trial by *proviso* shall be allowed, in the "same term in which the default of the plaintiff has been made."

Entry of issue unnecessary, for judgment as in case of nonsuit. *Prac.* 764.

The course and practice of the court referred to by the statute 14 Geo. II. c. 17, is that which before regulated the trial by *proviso*; and as the defendant could not have had such trial, until after the issue was entered of record [d], and the plaintiff had been guilty of *laches* [e], so neither, till then, was he entitled to judgment as in case of *nonsuit* [e]: But, by a late rule of all the courts [f], "no en-"try of the issue shall be deemed necessary, to entitle a defendant "to move for judgment as in case of a nonsuit."

Motion for costs, for not proceeding to trial, and judgment as in case of nonsuit. *Prac.* 759. 769.

In the King's Bench [g], and Exchequer [h], the defendant might formerly have moved the court for costs for not proceeding to trial, and afterwards for judgment as in case of a nonsuit; and it was a rule of the King's Bench, not to give costs, unless a separate motion was made for them: but he could not have moved for judgment as in case of a nonsuit, and costs for not proceeding to trial, at the same time [i]; nor, after moving for the former, was he in general allowed to apply for the latter [k]. In the Common Pleas, a defendant, who moved for costs for not proceeding to trial, could not have judgment as in case of a nonsuit, for the *same* default, either in the same or a subsequent term [l]; though it seems he might have had such judgment, after the issue was entered, for a *subsequent* default [m]; and, after moving for judgment as in case of a nonsuit, he was not allowed to move for costs for not proceeding to trial [n]. The defendant therefore, in that court, must have made

[a] R. M. 1654. § 21. C. P.

[b] Barnes, 295. Cas. Pr. C. P. 101. Pr. Reg. 397. S. C.

[c] R. H. 2 W. IV. *reg.* I. § 71.

[d] *Ante*, 79.

[e] Barnes, 313.

[f] R. H. 2 W. IV. *reg.* I. 70.

[g] 1 Bos. & P. 39. (*a.*); and see 1 Price, 61, 2. 7 Taunt. 476. 1 Moore, 251. S. C.

[h] Wightw. 65. 1 Price, 61. 2 Price, 90. 1 Cromp. & J. 466. 1 Tyr. Rep. 386. S. C.

[i] Earl of Leicester v. Wooden, M. 21 Geo. II. K. B.

[k] Hullock on Costs, 2 Ed. 406.

[l] Barnes, 316. 4 Taunt. 591.

[m] 4 Taunt. 591.

[n] *Id. ibid.* 7 Taunt. 476. 1 Moore, 251. S. C.

his election, either to move for costs for not proceeding to trial, or for judgment as in case of a nonsuit: and in practice, it was usual for him to move for the latter; upon which, if the court, on shewing cause, granted further time to the plaintiff, it was generally on the condition of his paying costs for not proceeding to trial [a]. But, by a late rule of all the courts [b], "no motion for judgment as in "case of a nonsuit shall be allowed, after a motion for costs for not "proceeding to trial, for the *same* default; but such costs may be "moved for separately, (i. e.) without moving at all for judgment "as in case of a nonsuit, or after such motion is disposed of: Or "the court, on discharging a rule for judgment as in case of a non-"suit, may order the plaintiff to pay the costs for not proceeding to "trial; but the payment of such costs shall not be made a condition "of discharging the rule."

[a] 2 H. Blac. 280. 1 Bos. & P. 38. 4 Taunt. 592. (*a*.)

[b] R. H. 2 W. IV. *reg.* I. § 69.

CHAP. XXXIV.

Of THE RULE FOR A VIEW.

Rule for view, how obtained. *Prac.* 485. 797.

IN actions of *waste*, and trespass *quare clausum fregit*, the necessity for a *view* in general appears on the face of the pleadings; and in other cases, the motion for it had become a motion of course, in the King's Bench, requiring only counsel's signature; upon which a rule of court was drawn up in term time, or a judge's order in vacation. In the Common Pleas, it was said, that a rule for a view was never granted, without an affidavit, in any case, except in an action of *waste* [a]; and therefore, in other cases, an application must have been made for the rule, to the court in term time, or to a judge in vacation, on an affidavit of the circumstances. But, by a late rule of all the courts [b], "the rule for a view may in all cases be drawn up "by the officer of the court, on the application of the party, without "affidavit or motion for that purpose."

[a] Barnes, 467.; and see 9 Moore, 497. 2 Bing. 262. S. C.

[b] R. H. 2 W. IV. *reg.* I. § 63.

CHAP. XXXV.

Of THE EXPENSES OF WITNESSES.

Expense of witness, to prove copy of judgment, &c. *Prac.* 815.

IN the King's Bench, the expenses of a person sent to inquire after the subscribing witnesses to a bond, were not allowed on the taxation of costs [a]; nor would the court allow the expenses of witnesses, if brought too early to attend a trial at the assizes [b]: And, by a late rule of all the courts [c], it is ordered, that "the expense of "a witness, called only to prove the copy of any judgment, writ, or

[a] 3 Maule & S. 89.

[b] 2 Chit. R. 200.

[c] R. H. 2 W. IV. *reg.* VI.

" other public document, shall not be allowed in costs, unless the " party calling him shall, within a reasonable time before the trial, " have required the adverse party, by notice in writing [a], and pro- " duction of such copy, to admit such copy; and unless such ad- " verse party shall have refused or neglected to make such admis- " sion." And by another rule [b] it is ordered, that " the expense " of a witness, called only to prove the handwriting to, or the exe- " cution of, any written instrument stated upon the pleadings, shall " not be allowed, unless the adverse party shall, upon summons [c] " before a judge, a reasonable time before the trial, such summons " stating therein the name, description, and place of abode of the " intended witness, have neglected or refused to admit such hand- " writing or execution; or unless the judge, upon attendance before " him, shall indorse upon such summons, that he does not think it " reasonable to require such admission."

To prove handwriting to, or execution of written instrument.

Prac. 815.

[a] Append. § 33.
[b] R. H. 2 W. IV. *reg.* VII.
[c] Append. § 34.

CHAP. XXXVI.

Of THE RULE TO SET ASIDE AWARD.

IN the Common Pleas, there is a rule [a], similar to a previous one in the King's Bench [b], that " when a rule to shew cause is obtained " in this court, to set aside an award, the several objections thereto " intended to be insisted upon at the time of making such rule ab- " solute, shall be stated in the rule to shew cause: " which rule has also been adopted in the Exchequer [c].

Rule *nisi* to set aside award, must state the objections thereto.

Prac. 844, 5.

[a] R. M. 10 Geo. IV. 6 Bing. 348.
[b] R. E. 2 Geo. IV. K. B. 2 Barn. & Ald. 539. 2 Chit. R. 376.
[c] 11 Price, 57. 1 M'Clel. & Y. 394.

CHAP. XXXVIII.

Of the RULE *for* JUDGMENT; *and* MOVING *for a* NEW TRIAL; *or in* ARREST *of* JUDGMENT; *or for* JUDGMENT NON OBSTANTE VEREDICTO.

Rule for judgment unnecessary, after verdict or nonsuit.
Prac. 483. 903, 4.

AFTER a general verdict, it was formerly incumbent on the prevailing party, in the King's Bench, to enter a rule for judgment *nisi causa*, on the *postea* or inquisition, with the clerk of the rules; and a rule for judgment was necessary when a verdict was taken by consent, subject to the award of an arbitrator, as to the *quantum* of the demand [a]: but it was not necessary if the plaintiff were *non-suited;* for in that case, as he was out of court, judgment might have been entered immediately after the day in bank [b]. In the Common Pleas, there was no rule for judgment; but the prevailing party waited till after the appearance day, or *quarto die post* of the return of the *habeas corpora juratorum* [c], before he signed final judgment, unless the *habeas corpora* were returnable on the *first* or *last* general return day: In the former case, final judgment could not have been signed, till the expiration of the first *four* days in full term: In the latter, it might it seems have been signed in the evening of the last day of term, being the appearance day of the return of the writ [d]. And, by a late rule of all the courts [e], "after a "verdict or nonsuit, judgment may be signed on the day after the "appearance day of the return of the *distringas*, or *habeas corpora*, "without any rule for judgment."

Motion for new trial. when made in Hilary and Trinity terms, in C. P.
Prac. 912.

In the Common Pleas it is a rule [f], that "in *Hilary* and *Trinity* "terms, no motion for a new trial shall be heard, unless such mo-"tion be actually made within the first *four* days of each of the "said terms."

[a] 4 East, 310.
[b] R. E. 5 Geo. II. *reg.* III. (*a.*) K. B.
[c] Barnes, 443. Pr. Reg. 410. S. C. Barnes, 445, 6. Pr. Reg. 410, 11. S. C.
[d] 2 Bos. & P. 393.
[e] R. H. 2 W. IV. *reg.* I. § 67.
[f] R. E. 11 Geo. IV. 6 Bing. 622.

When the rule for a new trial is silent as to costs, the costs of the first trial were not in general allowed, in the King's Bench, whichever way the verdict might go upon the second trial[a]. In the Common Pleas, the rule was formerly different; for there, if a new trial were granted, and the rule said nothing about costs, if the verdict on the second trial went the same way, the party succeeding was entitled to the costs of both trials[b]; and also, it seems, to the costs of the application[c]; but if the verdict went different ways, the party ultimately succeeding was not entitled to the costs of the first trial[b]. And, by a late rule of all the courts[d], "if a new "trial be granted, without any mention of costs in the rule, the costs "of the first trial shall not be allowed to the successful party, though "he succeed on the second."

Costs on new trial, when rule is silent respecting them.

Prac. 916.

The motion in arrest of judgment, or for judgment *non obstante veredicto*, might formerly have been made, in the King's Bench, at any time before judgment was given[e], though a new trial had been previously moved for[f]. In the Common Pleas, the motion in arrest of judgment must have been made before or on the appearance day of the return of the *habeas corpora juratorum*[g]. In the Exchequer, the motion in arrest of judgment must, it seems, have been made within the first *four* days of the next term after the trial; and it could not have been made after an unsuccessful motion for a new trial[h]. And, by a late rule of all the courts[i], "no motion "in arrest of judgment, or for judgment *non obstante veredicto*, "shall be allowed, after the expiration of *four* days from the time "of trial, if there are so many days in term; nor in any case after "the expiration of the term, provided the jury process be return-"able in the same term."

Time for moving in arrest of judgment, or for judgment *non obstante veredicto*.

Prac. 928.

[a] *Prac.* 916. (*e.*)
[b] *Id.* (*l.*)
[c] 10 Moore, 96.
[d] R. H. 2 W. IV. *reg.* I. § 64.
[e] 2 Str. 845. 2 Ken. 467. 5 Durnf. & E. 445.
[f] Doug. 745, 6.
[g] Barnes, 445.
[h] 7 Price, 566.; but see Man. Ex. Pr. 353.
[i] R. H. 2 W. IV. *reg.* I. § 65.

CHAP. XL.

Of Costs.

Costs upon several counts or issues, some of which are found for defendant.
Prac. 971, 2.

IT was formerly considered, that wherever a plaintiff succeeded on a trial, as to any part of his demand, divided into different counts in his declaration, whether the defendant had pleaded one plea to all the counts jointly, or pleaded to them separately, and separate issues had been joined, on some of which he had succeeded, yet he was never allowed costs on that part of the plaintiff's demand which had been found against the plaintiff[a]; and the same rule prevailed, where a defendant succeeded on a demurrer as to part of the plaintiff's demand[a]: But, by a late rule of all the courts[b], "no "costs shall be allowed on taxation to a plaintiff, upon any counts or "issues upon which he has not succeeded; and the costs of all is-"sues found for the defendant, shall be deducted from the plain-"tiff's costs."

Notice of taxing costs.
Prac. 989, 90.

It was formerly the practice, in the King's Bench and Common Pleas, to give notice to the opposite attorney, of the time when the costs were intended to be taxed: but, in order to enforce it, there must have been a side-bar rule to be present at taxing costs; which rule was obtained from the clerk of the rules in the King's Bench, or secondaries in the Common Pleas, and a copy duly served; after which, if the costs were taxed without notice, the taxation was irregular, and the attorney liable to an attachment. But, by a late rule of all the courts[c], "before taxation of costs, *one* day's notice "shall be given to the opposite party."

In Exchequer.
Prac. 990.

In the Exchequer of Pleas, by a subsequent rule[d], "*one* day's previous notice of the time of taxing costs, upon rules, orders, town

[a] 5 East, 264.; and see 10 East, 367, 8.
[b] R. H. 2 W. IV. *reg.* I. § 74.
[c] R. T. 1 W. IV. *reg.* VIII. 7 Bing. 784. 1 Cromp. & J. 472.
[d] R. M. 1 W. IV. *reg.* II. § 10. 1 Cromp. & J. 279. 1 Tyr. Rep. 161. And for cases on the construction of this rule, see 2 Cromp. & J. 89. 163.

" *posteas*, and inquisitions, and a copy of the bill of costs, and affidavit to increase if any, shall be given and delivered by the attorney or attornies of the party or parties whose costs are to be taxed, to the attorney of the other party or parties in the same action, at the time of service of such notice; and, in the cases of *posteas* and inquisitions in country causes, the notice shall be given *two* days, and the copy and affidavit delivered *two* days before such taxation."

What costs are allowed on taxation.

In taxing costs, the officer by whom they are taxed is authorized by the instructions given by the courts to their taxing officers, in Hilary Term 2 W. IV., to allow at his discretion, to a plaintiff or defendant, all such costs as shall reasonably have been incurred by him after commencement of suit, notwithstanding the same may be such as may not heretofore have been allowed between party and party: Provided nevertheless, that in cases where it may have been reasonable to take advice as to the necessary evidence, or to have a consultation before trial, the officer shall not be authorized, upon taxation between party and party, to allow the expense of more than one opinion by one barrister or pleader, and of one consultation, as costs in the cause.

Prac. 440.

Of declaration, &c.

It has been already seen [a], that in actions to which the late rule of Trin. 1 W. IV. for shortening declarations applies, if the debt amount to 20*l.* and upwards, and the declaration is under *twenty-four folios*, the officer who taxes the costs is authorized to allow for declaration, including instructions, copy and delivery, 1*l.* 18*s.*; and for close copy, in country causes, according to length. The taxing officer is also authorized to allow for fee on interlocutory judgment, including rule to plead, searching for and demanding plea, drawing judgment, *incipitur*, entering on the roll, docket, and attending to sign judgment and to docket, 1*l.* 11*s.* 4*d.*; and for fee attending to tax, 6*s.* 8*d.*: Provided, that the above instructions shall not extend to cases in which several actions shall be brought on the same bill or note, against several parties thereto; and it is declared, that for drawing all issues, whether in fact or in law, in the courts of King's Bench, Common Pleas, and Exchequer of Pleas, the sum to be allowed *per folio* to an attorney, shall be *eight* pence."

Prac. 440.

[a] *Ante*, 46.

CHAP. XLI.

Of WRITS OF EXECUTION.

Signing and sealing writs of execution.

Prac. 999. 1027.

A WRIT of *fieri facias*, or *capias ad satisfaciendum*, need only be *sealed*, in the King's Bench: In the Common Pleas, all executions issuing out of the prothonotaries' office were formerly required to be duly *signed* by the respective prothonotaries, before the same were sealed [a]: But, by a late rule of all the courts [b], "it shall "not be necessary that any writ of execution shall be signed; "but no such writ shall be sealed, till the judgment paper, *postea*, "or inquisition, has been seen by the proper officer."

[a] R. M. 1654. § 6. C. P.

[b] R. H. 2 W. IV. *reg.* I. § 75.

CHAP. XLIII.

Of SCIRE FACIAS.

Time between *teste* and return of *ca. sa.* to fix bail, and for its lying in sheriff's office.

Prac. 1098, 9. 1126.

IN order to charge the bail, in the King's Bench, when the proceedings are by *bill*, there must be *eight* days, or, if by *original* in that court, or in the Common Pleas [a], *fifteen* days between the *teste* and return of the writ of *capias ad satisfaciendum* [b]; the latter being a case excepted out of the statute 13 Car. II. stat. 2. c. 2. § 7. And, in the King's Bench, it has been holden, that in order to fix bail, the *capias ad satisfaciendum* must be entered *four*

[a] Barnes, 76.

[b] 2 Salk. 602. 2 Ld. Raym. 1177. S. C. R. E. 5 Geo. II. *reg.* III. (*a.*) K. B. Barnes, 76. Imp. C. P. 6 Ed. 481.

days in the *public* book at the sheriff's office [a]. This, however, does not seem to have been deemed necessary in the Exchequer [b]: But, by a late rule of all the courts [c], "in actions commenced by *bill*, a *capias ad satisfaciendum* to fix bail shall have *eight* days between the "*teste* and return, and in actions commenced by *original*, *fifteen*; "and must, in *London* and *Middlesex*, be entered *four* clear days "in the public book at the sheriff's office."

Scire facias, to revive an old judgment. *Prac.* 484, 5, 6, 7. 485. (*m.*) 1105, 6.

The writ of *scire facias* to revive a judgment, after a year and a day, may be sued out of course at any time within *seven* years from the date of the judgment, without application to the court [d]: but if it were above *seven*, and under *ten* years old, a side bar or treasury rule must formerly have been obtained for that purpose, from the clerk of the rules in the King's Bench [e], or secondary in the Common Pleas [f]. If it were above *ten* years old, there must have been a motion to the court, in the King's Bench [g], supported by an affidavit of the debt being due, the judgment unsatisfied, and the defendant living; upon which the rule was absolute in the first instance, unless the judgment were of more than *twenty* years standing, and then there must have been a rule to shew cause [g]. Afterwards, if the judgment were above *ten* and under *fifteen* years old, the rule was absolute in the first instance, on an affidavit of the debt being due, &c.; and might have been drawn up on a motion paper signed by counsel: If it were above *fifteen* years old, there must have been a rule to shew cause [h]. In the Common Pleas, when the judgment was more than *ten* years old, the court must have been moved in term time, for leave to issue a *scire facias* to revive it; and would order that no execution should be taken out thereon, without a return of *scire feci*, or an affidavit of personal notice to the defendant [i]; and if the judgment were above *twenty* years old, there must have been a rule to shew cause [k]. But, by a

[a] 5 Maule & S. 323. 2 Chit. R. 102. S. C.; but see 3 East, 570. *contrà*. 1 M'Clel. & Y. 483.

[b] 1 M' Clel. & Y. 483.

[c] R. H. 2 W. IV. *reg.* I. § 77.

[d] Imp. K. B. 10 Ed. 453. Imp. C. P. 6 Ed. 466.

[e] 2 Salk. 598.

[f] Imp. C. P. 6 Ed. 466.

[g] 2 Salk. 598. Sty. P. R. 575. Ed. 1707. 2 Lil. P. R. 499. Ed. 1719. 1 *Inst. Cler.* 152.

[h] Blakely v. Vincent, T. 35 Geo. III. Waters v. Hales, E. 37 Geo. III. K. B. 2 Barn. & Ald. 773. 1 Chit. R. 535. S. C. 1 Dowl. & R. 181.

[i] 2 Blac. Rep. 1140.; and see 3 Moore, 757. 1 Brod. & B. 381. S. C.

[k] 2 Sel. Pr. 2 Ed. 196.; and see 2 Blac. Rep. 995.

gment
motion
; nor, if

CHAP. XI.

Of WRITS

, being an
brought in
his court are
Pleas, but by
cognizance enter-
entered as taken at a
scire facias might have
the Common Pleas, upon a
Inn, or before a commissioner in
Westminster, the *scire facias* might
London, or in the county where the recog-
or in *Middlesex* [d]. But, by a late rule of all
scire facias upon a recognizance taken in *Serjeants'*
before a commissioner in the country, and recorded at
Westminster, shall be brought in *Middlesex* only; and the form
of the recognizance shall not express where it was taken."

Signing and sealing writs of execution. *Prac.* 999. 1027.

A WRIT of *fieri facias*
be *sealed*, in the King's
tions issuing out of the
to be duly *signed* by
were sealed [a]: B
"not be necess
"but no such
"or inquisi

[a] R. M

In the King's Bench, the plaintiff must formerly have paid costs, on quashing his own writ of *scire facias*, after the defendant had appeared thereto [f]: In the Common Pleas, the plaintiff might have moved to quash his own writ, without paying costs, at any time before the defendant had pleaded [g]: But now, by a late rule of all the courts [h], "a plaintiff shall not be allowed "a rule to quash his own writ of *scire facias*, after a defendant "has appeared, except on payment of costs."

Judgment how signed, for non-appearance to *scire facias*. *Prac.* 1124, 5.

When the sheriff returns *nihil* to a *scire facias*, the plaintiff, in the King's Bench, must in all cases have sued out a second, or *alias*

[a] R. H. 2 W. IV. *reg.* I. § 79.

[b] 2 Salk. 564. 600. 659. 6 Mod. 42. 132. 7 Mod. 120, 21. R. E. 5 Geo. II. *reg.* III. (*a.*) K. B. 1 Bur. 409. 5 East, 461. 2 Smith R. 14. S. C.

[c] 8 Mod. 290. R. E. 5 Geo. II. *reg.* III. (*a.*) K. B. Lil. Ent. 520.

[d] Hob. 195. Brownl. 69. Mo. 883. S. C. Sty. Rep. 9. Aleyn, 12. S. C. 2 Lutw. 1287. Cas. Pr. C. P. 31. Barnes, 96, 7. 207. 2 Blac. Rep. 768. 2 Moore, 66. 8 Taunt. 171. S. C.

[e] R. H. 2 W. IV. *reg.* I. § 80.

[f] 1 Barn. & Ald. 486.; and see 1 Str. 638.

[g] Pr. Reg. 378, 9. Cas. Pr. C. P. 109. Barnes, 431. S. C.

[h] R. H. 2 W. IV. *reg.* I. § 78.

writ of *scire facias* [a], commanding the sheriff, as *before* he was commanded, &c.; and if, upon this second writ, the sheriff also returned *nihil*, and the bail or defendant did not appear, judgment was formerly given against them [b]: two *nihils* being deemed equivalent to a *scire feci* [c]: and it was not necessary to give notice of *scire facias's*, to the bail; it being their duty to watch the sheriff's office, where they were lodged [d]: In the Common Pleas, if a *scire facias* issued upon a judgment, for debt and damages, against the defendant himself, who was party and privy to the judgment, and the sheriff returned *nihil*, and the defendant made default, judgment was given against him, without awarding a second *scire facias* [e]: But, by a late rule of all the courts [f], "no judgment shall be signed, "for non-appearance to a *scire facias*, without leave of the court "or a judge [g], unless the defendant has been summoned; but such "judgment may be signed, by leave, after *eight* days from the return "of one *scire facias*."

Appearance by bail or defendant, on *scire facias*. *Prac.* 1127.

The appearance of the bail or defendant, to a *scire facias* in the King's Bench, if the action were by *bill*, is signified by delivering a note in writing to the plaintiff's attorney: If the action were by *original*, an appearance should formerly have been entered with the *filacer* [h], or, in the Common Pleas, with the prothonotaries [i]: But, by a late rule of all the courts [k], "a notice in writing to the "plaintiff, his attorney or agent, shall be a sufficient appearance, by "the bail or defendant, on a *scire facias*."

[a] 2 Inst. 472. Cro. Jac. 59. 8 Mod. 227. Say. Rep. 121.

[b] Dyer, 168. 172. 198. 201. Yelv. 112. Sty. Rep. 281. 288. 323.

[c] 1 East, 89. 4 East, 312.

[d] Sillitoe v. Wallace another, bail of Cawthorne, M. 43 Geo. III. K. B. 8 Moore, 8.

[e] Dyer, 168. *a.* 2 Inst. 472. 2 Salk. 599. Com. Dig. tit. *Pleader*, 3 L. 8.

[f] R. H. 2 W. IV. *reg.* I. § 81.

[g] For the form of an affidavit to obtain leave to sign judgment, where the defendant has not been summoned, on two *scire facias's* on a judgment, see Chit. Pr. *Addend.* 24, 5.; and for the like, on two *scire facias's* against bail, *id.* 25, 6.

[h] 2 Archb. K. B. 89.

[i] Imp. C. P. 7 Ed. 502. 515. 520.

[k] R. H. 2 W. IV. *reg.* I. § 82.

CHAP. XLIV.

Of ERROR.

Writ of error, from what time a *supersedeas*.
Prac. 530. 1145, 6.

AFTER final judgment, and before execution executed, a writ of error is, generally speaking, a *supersedeas* of execution, from the time of its allowance [a], provided bail, when necessary, be put in and perfected in due time [b]; and the allowance is notice of itself [c]: Or if the plaintiff, *before* the allowance, had notice of the writ of error being sued out, it was from the time of that notice a *supersedeas* [d]: And, in the Exchequer, a writ of error was a *supersedeas* of execution, from the time of giving *notice* of the allowance to the plaintiff in the action, or his attorney or clerk in court [e]: But, by a late rule of all the courts [f], "a writ of error shall be deemed a *supersedeas*, "from the time of the allowance."

Recognizance of bail in error, in what sum.
Prac. 1155, 6.

In *personal* actions, it is a rule, founded upon the statute 3 *Jac.* 1. c. 8., that the recognizance should be acknowledged in *double* the sum adjudged to be recovered by the former judgment [g]; and accordingly it has been holden, that a recognizance of bail in error, for less than double the sum recovered by the judgment, does not operate as a *supersedeas* or stay of execution [h]. But upon error in *debt* on bond, though the bail were formerly bound in double the penalty recovered, yet, by the course of the King's Bench, it was deemed sufficient if they justified in double what was really due [i]: and, in the Common Pleas, if the bail were bound in double the

[a] *Prac.* 1145. (*e.*)
[b] *Id.* (*f.*)
[c] 1 Salk. 321. 1 Durnf. & E. 280. 1 Chit. R. 238. 241. 3 Moore, 83. Gow, 66. S. C.
[d] 1 Salk. 321. 6 Mod. 130. 2 Ld. Raym. 1260. S. C. Say. Rep. 51.; and see R. E. 36 *Car.* II. K. B. R. M. 28 *Car.* II. C. P. Barnes, 205. 209.
[e] R. T. 26 & 27 Geo. II. § 2. Exchequ. Man. Ex. Append. 209, 10. 4 Price, 289.
[f] R. H. 2 W. IV. *reg.* I. § 83.
[g] 2 Chit. R. 105.
[h] 5 Taunt. 320.
[i] 2 Str. 821.

sum secured by the condition, it was sufficient; though a further sum was due for interest and costs, and nominal damages had been recovered [a]. In the Exchequer of Pleas it was a rule [b], that "in all cases where special bail was required on writs of error, if the bail were obliged to justify, each of them should justify himself in double the sum recovered by the judgment, on which the writ of error was brought; except where the penalty of a bond, or other specialty, was recovered by such judgment, in which case each of the bail should justify in such penalty only." And now, by a late rule of all the courts [c], "a recognizance of bail in error shall be "taken in double the sum recovered, except in case of a penalty; "and in case of a penalty, in double the sum really due, and double "the costs."

Time allowed for justifying bail in error, when excepted to in vacation. *Prac.* 1157, 8.

In the King's Bench, if a rule for better bail was served in vacation, there was formerly, it seems, no occasion to justify until the next term; but the plaintiff in error must either have given notice of justifying the *same* bail, or put in such other bail as he would abide by, within the *four* days allowed by the rule; it having been determined, that he could not give notice of fresh bail, after the *four* days, unless indeed the bail already put in were prevented from justifying by special circumstances, which must have been disclosed to the court, by affidavit, at the time appointed for justifying [d]. In the Common Pleas, when the rule was served in vacation, the plaintiff in error had not time of course to perfect his bail until the next term; but ought to have justified before a judge: and if the defendant in error were not satisfied with that, then the plaintiff in error, having done every thing in his power, was entitled to time for justifying until the next term, but not otherwise [e]. In the Exchequer of Pleas it was a rule [f], that "if bail in error were excepted to, and notice of exception given in writing to the attorney or clerk in court for the plaintiff in error in *term* time, such bail should be perfected and justified within *four* days after notice so given, or the defendant in error might, in default thereof, have proceeded to execution, notwithstanding such writ of error: but

[a] 2 Bos. & P. 443.

[b] R. E. 33 Geo. II. Excheq. Man. Ex. Append. 217.

[c] R. H. 2 W. IV. *reg.* I. § 26.

[d] 1 Maule & S. 366. *Id.* 367. (*a.*) and see 2 Chit. R. 84, 5.

[e] Barnes, 211. 2 Blac. Rep. 1064. Imp. C. P. 7 Ed. 765, 6.

[f] R. T. 26 & 27 Geo. II. § 2. Excheq. Man. Ex. Append. 210.

CH. XLIV. where notice of exception was given in *vacation* time, then such bail should be perfected and justified upon the *first* day of the subsequent term, unless the defendant in error, his attorney or clerk in court, should consent to a justification before one of the barons; in which case such bail should justify themselves before a baron, within *four* days after notice of such exception given in writing to the plaintiff in error, his attorney or clerk in court: and in default of such justification, the defendant in error might have proceeded to execution, notwithstanding such writ of error." But, by a late rule of all the courts[a], "if bail in error are excepted to in *va-*
"*cation*, and the notice of exception require them to justify be-
"fore a judge, the bail shall justify within *four* days from the
"time of such notice, otherwise on the first day of the ensuing
"term."

[a] R. H. 2 W. IV. *reg.* I. § 17.

CHAP. XLV.

Of EJECTMENT.

THE declaration in *ejectment* must formerly have been delivered before the *essoin* day of the term, in which the notice was given to appear; otherwise the plaintiff could not have had judgment till the next term [a]: And where the service of the declaration was before the *essoin* day, but the explanation of it to the tenant in possession did not take place till after, the court held that the lessor of the plaintiff was not entitled to judgment [b]. But now, by a late rule of all the courts [c], "declarations in *ejectment* may be served before "the *first* day of any term; and thereupon the plaintiff shall be "entitled to judgment against the casual ejector, in like manner as "upon declarations served before the *essoin* or *first* general return-"day."

Service of declaration in ejectment. *Prac.* 1210.

On suing out the writ of *habere facias possessionem* in *ejectment*, a *præcipe* was formerly required in the King's Bench [d], but not in the Common Pleas [e]: And now, by a late rule of all the courts [f], "a writ of *habere facias possessionem* may be sued out, without "lodging a *præcipe* with the officer of the court."

Præcipe for *habere facias possessionem*, unnecessary. *Prac.* 1244.

This writ was formerly signed, in the King's Bench, by the signer of the writs; and in the Common Pleas, by the prothonotaries: But, by a late rule of all the courts [g], "it shall not be necessary "that any writ of execution shall be signed; but no such writ "shall be sealed, till the judgment paper, *postea*, or inquisition, has "been seen by the proper officer."

Writ need not be signed. *Prac.* 1245.

[a] Barnes, 172, 3.
[b] 1 Dowl. & R. 563.
[c] R. T. 1 W. IV. *reg.* VII. 7 Bing. 784. 1 Cromp. & J. 472.
[d] Imp. K. B. 10 Ed. 596.
[e] 2 Sel. Pr. 2 Ed. 100. 121. Imp. C. P. 7 Ed. 631.
[f] R. H. 2 W. IV. *reg.* I. § 76.
[g] R. H. 2 W. IV. *reg.* I. § 75. *Ante*, 88.

Recognizance of bail in error in ejectment, in what sum.

Prac. 1252, 3.

In the King's Bench, the practice formerly was for the plaintiff in error, or his bail, to enter into a recognizance, in *double* the improved rent, or yearly value of the premises, and *single* amount of the costs [a]. In the Common Pleas, the clerk of the errors governed himself, in fixing the penalty of the recognizance, by the amount of the rent of the premises, and took the recognizance in *two* years' rent or profits, and *double* costs [b]: and where the plaintiff in error entered into the recognizance, it was not necessary for him, in that court, to give the defendant in error notice thereof [c], nor could he be examined, in the King's Bench, as to his sufficiency [d]; though, when bail in error was put in, notice thereof must have been given, and they might have been examined, as in other cases. In the Exchequer, the bail must formerly have justified in *double* the improved annual rent, or value of the premises recovered [e]. But, by a late rule of all the courts [f], "in *ejectment*, the recognizance of bail "in error shall be taken in double the yearly value, and double the "costs."

[a] 8 East, 298.; and see Cas. *temp.* Hardw. 374.

[b] 7 Taunt. 428. 1 Moore, 119, 20. S. C.; and see Barnes, 103. *accord.*

[c] 7 Taunt. 427. 1 Moore, 118. S. C.

[d] 8 East, 299.

[e] R. E. 33 Geo. II. *in Scac.* Man. Ex. Append. 217.

[f] R. H. 2 W. IV. *reg.* I. § 27.

APPENDIX

OF

PRACTICAL FORMS, &c.

ADAPTED TO THE FOREGOING RULES.

TABLE OF FEES,

(§ 1.)
Ante, 1.

To be taken by the Sworn and Side Clerks of the Exchequer, for Duties to be performed by them as Officers of the Court.

	£	s.	d.
On process of *subpœna ad respondendum*	0	1	6
Filing affidavit of service of *subpœna*	0	1	0
Attachment for not appearing to *subpœna*	0	1	6
Alias and *pluries* attachment, each	0	1	6
One appearance in the paper book for one defendant	0	1	0
For every additional defendant	0	0	4
On special bail and filing	0	4	4
For taking bail off the file, to produce in court	0	1	0
Filing all affidavits, (not excepted by act of parliament,) *posteas*, and inquisitions	0	1	0
Searching for all writs, affidavits, and processes, each time, *per* term	0	0	4
Searching for judgment, and all matters of record, *per* term	0	0	4
Office copies of all affidavits, and other matters of record, *per* folio	0	0	8
Office copies of all rules, *per* folio	0	0	4
On taking all pleadings out of the office, 4*d. per* folio, according to the number of folios marked on the pleading by the party filing the same, *per* folio	0	0	4

PARTICULAR RETURN DAYS.

The process by *bill* in the King's Bench, or *attachment* of privilege in that court or the Common Pleas, or process in the Exchequer, may be made returnable on any day of the term, not being *Sunday*, or *Ascension* day if it happen, as it may, in *Easter* or *Trinity* term.

(§ 3.) *Ante*, 7, &c.

TABLE OF TERMS AND RETURNS, FOR 1832.

HILARY TERM

Begins on *Wednesday* the 11th, and ends on *Tuesday* the 31st *January*.

The *first* essoign, or general return day, for this term is *Sunday* the 8th *January*.

The subsequent essoign, or general return days, are any day, not being *Sunday*, between *Sunday* the 8th, and *Saturday* the 28th *January*, being the *third* day exclusive before the last day of the term.

The *last* essoign, or general return day, is *Friday* the 27th *January*.

EASTER TERM

Begins on *Sunday* the 15th *April*, and ends on *Saturday* the 12th *May*.

The *first* essoign, or general return day, for this term is *Thursday* the 12th *April*.

The subsequent essoign, or general return days, may be any day, not being *Sunday*, between *Thursday* the 12th *April*, and *Wednesday* the 9th *May*.

The *last* essoign, or general return day, is *Tuesday* the 8th *May*.

TRINITY TERM

Begins on *Saturday* the 26th *May*, and ends on *Saturday* the 16th *June*.

The *first* essoign, or general return day, for this term is *Wednesday* the 23d *May*.

The subsequent essoign, or general return days, may be any day, not being *Sunday*, or *Ascension* day, between *Wednesday* the 23d *May*, and *Wednesday* the 13th *June*.

The *last* essoign, or general return day, is *Tuesday* the 12th *June*.

MICHAELMAS TERM

Begins on *Friday* the 2d, and ends on *Monday* the 26th *November*.

The *first* essoign, or general return day, for this term is *Tuesday* the 30th *October*.

The subsequent essoign, or general return days, may be any day, not being *Sunday*, between *Tuesday* the 30th *October*, and *Friday* the 23d *November*.

The *last* essoign, or general return day, is *Thursday* the 22d *November*.

DAY FOR APPEARANCE.

The day for appearance, on writs usually returnable on general return days, is, we have seen[a], declared to be, as heretofore, the *third* day exclusive after the return day; or, in case such third day fall on a *Sunday*, then on the *fourth* day after such return, exclusive of the day of return.

PARTICULAR RETURN DAYS.

The process by *bill*, in the King's Bench, or *attachment* of privilege, in that court or the Common Pleas, or process in the Exchequer, may be made returnable on any day of the term, not being *Sunday*, or the 31st *May*, (being *Ascension* day,) in *Trinity* term.

The plaintiff claims —— for debt, and —— for costs: And if the amount thereof be paid to the plaintiff, or his attorney, within *four* days from the service hereof, further proceedings will be stayed."

(§ 4.) Indorsement on process, of plaintiff's claim for debt and costs*.

Ante, 15.

B. } Let the plaintiff's attorney or agent attend me, at my cham-
v. } bers in *Serjeants'* Inn, tomorrow, at —— of the clock in the
D. } —— noon, to shew cause, why the defendant should not have leave to put in and justify *three* persons, as good and sufficient bail in

(§ 5.) Summons for leave to put in more than *two* bail.

Ante, 20. (*f.*)

[a] *Ante*, 10. 99.

* See R. H. 2 W. IV. *reg.* II.

this cause, to wit, *E. F.* of ——, in ——*l.*; *G. H.* of ——, in ——*l.*; and *I. K.* of ——, in ——*l.* Dated the —— day of ——, 18—.

—— (Judge's *or* Baron's name.)

(§ 6.) Notice of putting in town bail, in K. B. or C. P. where the bail are both housekeepers, and have not changed their residences within the last six months. *Ante*, 22.

In the King's Bench, (*or* Common Pleas.)

A. B. plaintiff,
and
C. D. defendant.

Take notice, that special bail was this day put in (*adding, if by original in K. B. or C. P.*, "with the filacer",) for the defendant in this cause, before the Honourable Mr. Justice ——, at his chambers in *Serjeants'* Inn, *Chancery* Lane, *London;* and the names and additions of such bail are, *E. F.* of No. ——, —— street, in the county of ——, and *G. H.* of No. ——, —— street, in the said county, ——: And further take notice, that the said *E. F.* and *G. H.* are both housekeepers, and have been respectively resident at their present places of abode, for the last six months. Dated the —— day of ——, 18——. Yours, &c.,

L. M. Temple,
defendant's attorney, (*or* agent.)

To Mr. *I. K.*, plaintiff's attorney, (*or* agent.)

(§ 7.) The like, where one of the bail is a freeholder, and has changed his residence within that period. *Ante*, 22.

In the King's Bench, &c. *(as in last.)*

A. B. plaintiff, &c. (*id.*)

Take notice, that special bail was this day put in, &c. *(as in the last, to the end of the names and additions of the bail, and then as follows:)* And further take notice, that the said *E. F.* is a freeholder, and hath at different times, within the last six months, resided at No. ——, —— street, (&c.;) and that the said *G. H.* is a housekeeper, and hath, for the last six months, resided at No. ——, —— street, (&c.) Dated, &c. *(as in last, with the like subscription, and direction.)*

(§ 8.) The like, in the Exchequer. *Ante*, 22.

In the Exchequer of Pleas.

A. B. plaintiff, &c. (*as above.*)

Take notice, that special bail was this day put in for the defendant in this cause, before the Hon. Mr. Baron ——, at his chambers in *Serjeants'* Inn, *Chancery* Lane; and that the bail-piece has been filed in the office of Pleas, with the sworn clerks; and the names and additions of such bail are *E. F.* of (&c.) and *G. H.* of &c. (*as in* § 6. *stating the names, additions, and residences of the*

bail:) And further take notice, that the said *E. F.* and *G. H.* are both housekeepers, &c. (*as in* § 6.; *or* that the said *E. F.* is a freeholder, &c. and the said *G. H.* is a housekeeper, &c. *as in* § 7.) Dated, &c. *(as in* § 6. *with the like subscription, and direction.)*

(§ 9.) Notice of bail, when accompanied by affidavits of justification. *Ante*, 22. 25.

(As in the three preceding forms, to the date at the end, and then as follows:) And further take notice, that the said *E. F.* and *G. H.* have duly made and sworn to the affidavits of justification which accompany this notice for your perusal, and copies of which affidavits are herewith left. Dated, &c. *(as in* § 6. *with the like subscription, and direction.)*

Or thus: And I hereby give you notice, that each of the bail has made an affidavit of justification, copies whereof accompany this notice. Dated, &c. *(as above.)*

(§ 10.) Form of one day's notice of exception thereto. *Ante*, 22. 25.

In the King's Bench,
(Common Pleas, *or*
Exchequer of Pleas.)

A. B. plaintiff, &c. (§ 6.)

I have excepted to the bail put in for the defendant in this cause: *(or, more specially, thus*:* Take notice, that I have excepted, and do except to the bail put in for the defendant in this cause; and do hereby require them to justify in person, in open court, at *Westminster* Hall, notwithstanding the affidavits made by them, and which accompanied the notice of bail served in this cause.) Dated, &c. (§ 6.) Yours, &c.

I. K. Temple,
plaintiff's attorney, (*or* agent.)

* Chit. Pr. Append. 327.

To Mr. *L. M.* defendant's attorney, (*or* agent.)

(§ 11.) Summons for leave to add one or more bail. *Ante*, 23.

B. v. *D.* } Let the plaintiff's attorney or agent attend me, at my chambers in *Serjeants'* Inn, to-morrow, at —— of the clock in the —— noon, to shew cause, why the defendant should not have leave to add *I. K.* of (&c.) as one of the bail (*or I. K.* of, &c. and *L. M.* of, &c. as bail) in this cause, in lieu of *E. F.* (*or E. F.* and *G. H.*) of whom you have already had notice; and why, until such proposed bail shall have been added and justified, if excepted to, all proceedings in this cause should not be stayed. Dated, &c. (§ 5.)

—— (Judge's *or* Baron's name.)

(§ 12.) Judge's (*or* baron's) order thereon. *Ante*, 23.

B. v. *D.* } Upon hearing the attornies (*or* agents) on both sides, I order, that the defendant have leave to add *I. K.* &c. *(as in last).* Dated, &c. (§ 5.)

—— (Judge's *or* Baron's name.)

(§ 13.) Notice of adding and justifying bail, by previous leave of a judge or baron, pursuant to rule of T. 1 W. IV. *Ante*, 23.

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, (§ 6).

Take notice, that *I. K.* of No. ——, ——, in the county of ——, and *L. M.* of No. ——, ——, in the county of ——, will, on —— next, by the leave and order of the Honourable Mr. Justice (*or* Baron) ——, add themselves to the bail already put in for the defendant in this cause; and will at the same time justify themselves in open court, at *Westminster* Hall, in the county of *Middlesex*, as good and sufficient bail for the said defendant: And further take notice, that the said *I. K.* and *L. M.* are both housekeepers, &c. *(as in* § 6; *or* that the said *I. K.* is a freeholder, &c., and the said *L. M.* is a housekeeper, &c. *as in* § 7.) Dated, &c. *(as in* § 6. *with the like subscription, and direction.)*

(§ 14.) The like, where one bail only is to be added. *Ante*, 23.

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, &c. (§ 6.)

Take notice, that *I. K.* of, &c. *(as in last,)* will, on —— next, by the leave, &c. *(as in last,)* add himself to the bail already put in for the defendant in this cause; and that he, together with *E. F.* one of the bail already put in for the said defendant, and of whom you have before had notice, will at the same time justify themselves in open court, at *Westminster* Hall, in the county of *Middlesex*, as good and sufficient bail for the said defendant: And further take notice, that the said *I. K.* and *E. F.* &c. *(as in last.)* Dated, &c. *(as in* § 6. *with the like subscription, and direction.)*

(§ 15.) Notice of putting in and justifying bail at same time. *Ante*, 24.

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, &c. (§ 6.)

Take notice, that *E. F.* of No. ——, —— street, (&c.) and *G. H.* of No. ——, —— street, (&c.) will, on the —— day of —— instant, (*or* next,) be put in as special bail for the defendant in this cause; and will at the same time justify themselves in open court, at *Westminster* Hall, in the county of *Middlesex*, (*or* "before the Honourable Mr. Justice, *or* Baron, ——, at his chambers in *Serjeants'* Inn, *Chancery* Lane,") as good and sufficient bail for the said defendant: And further take notice, that the said *E. F.* and *G. H.*

are both housekeepers, &c. *(as in* § 6.; *or* "that the said *E. F.* is a freeholder, &c. and the said *G. H.* is a housekeeper," &c. *as in* § 7.) Dated, &c. *(as in* § 6, *with the like subscription, and direction.)*

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, &c. (§ 6.)

(§ 16.) Notice thereupon, from plaintiff's attorney, requiring further time to inquire after the bail. *Ante*, 24.

Take notice, that the above named plaintiff is desirous of time to inquire after the bail, whereof notice has been given in this cause; and that he doth require —— days' further time to inquire after the said bail; and the time for putting in and justifying bail in this cause will be postponed accordingly, until —— the —— day of —— instant, (*or* next.) Dated, &c. (§ 6.)

Yours, &c.

I. K. Temple.

plaintiff's attorney, (*or* agent.)

To Mr. *L. M.*, defendant's attorney, (*or* agent.)

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, &c. (§ 6.)

(§ 17.) Affidavit of justification of bail, on R. T. 1 W. IV. *Ante*, 25.

E. F. one of the bail for the above-named defendant, maketh oath and saith, that he is a housekeeper, (*or* "freeholder," *as the case may be,*) residing at ——, *(describing particularly the street or place, and number, if any;)* that he is possessed of property to the amount of ——*l. (the amount required by the practice of the courts,)* over and above all his just debts; *(if bail in any other action, add* "and every other sum for which he is now bail,") that he is not bail for any defendant, except in this action, *(or, if bail in any other action or actions, add,* "except for *G. H.* at the suit of *I. K.* in the court of ——, in the sum of ——*l.*; for *L. M.* at the suit of *N. O.* in the court of ——, in the sum of —— *l.*"; *specifying the several actions, with the courts in which they are brought, and the sums in which the deponent is bail;)* that the deponent's property, to the amount of the said sum of ——*l.* (" and" *if bail in any other action or actions,* "of all other sums for which he is now bail as aforesaid,") consists of ——, *(here specify the nature and value of the property, in respect of which the bail proposes to justify, as follows:* "stock in trade in his business of ——, carried on by him at ——, of the value of ——*l.*; of good book debts owing to him, to the amount of ——*l.*; of furniture in his house at ——, of the value of ——*l.*; of a freehold (*or* leasehold) farm, of the value of ——*l.*, situate at ——, occupied by ——; *or* of a dwelling

house; of the value of ——, situate at ——, occupied by ——; *or of other property, particularizing each description of property, with the value thereof:)* and that the deponent hath, for the last six months, resided at ——, *(describing the place or places of such residence.)*

Sworn, (&c.) *E. F.*

(§ 18.) Notice of justification, by *same* bail, in court. *Ante*, 26.

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, &c. (§. 6.)

Take notice, that *E. F.* and *G. H. (in K. B. and Exchequer, or in C. P.*[a] "*E. F.* of ——, and *G. H.* of ——,") the bail already put in for the defendant in this cause, and of whom you have before had notice, will, on —— next, being the —— day of —— instant, justify themselves *(adding, if country bail,* "by affidavit") in open court, at *Westminster* Hall, in the county of *Middlesex*, as good and sufficient bail for the said defendant. Dated, &c. *(as in* § 6, *with the like subscription, and direction.)*

(§ 19.) The like at chambers, on stat. 11 Geo. IV. & 1 W. IV. c. 70. § 12. *Ante*, 26.

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, &c. (§ 6.)

Take notice, that *E. F.* and *G. H. (in K. B. or Exchequer; or in C. P.,* "*E. F.* of ——, and *G. H.* of ——,") the bail already put in for the defendant in this cause, and of whom you have before had notice, will, on —— next, justify themselves *(adding, if country bail,* "by affidavit,") before the Honourable Mr. Justice *(or* Baron) ——, or such other judge (*or* baron) as shall be then sitting at chambers, in *Serjeants'* Inn, *Chancery* Lane, *London, (or, if any other place be appointed,* "at ——, in the county of ——,") as good and sufficient bail for the said defendant. Dated, &c. *(as in* § 6. *with the like subscription, and direction.)*

(§ 20.) Demand of declaration, &c. *Ante*, 42, 3, 4. 72, 3.

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, &c. (§ 6.)

The defendant demands a declaration (*or* replication, *or* surrejoinder, *or*, in *replevin*, plea in bar, &c.) in this cause; and unless the plaintiff declares, (*or* replies, &c.) within *four* days next after

[a] In the Common Pleas, by a rule of *Mich.* 7 Geo. IV. (12 Moore, 207, 8.) the names and descriptions of the bail must be inserted in the notice of justification; but this does not seem to be necessary in the King's Bench. Imp. K.B. 10 Ed. 127. Archb. Forms, 50.

this demand, judgment of *non pros* will be signed. Dated, &c. (*as in* § 6. *with the like subscription, and direction.*)

In the King's Bench, (*or* Common Pleas.)
—— term, in the —— year of the reign of King *William* the Fourth.
—— (to wit.) *C. D.* was attached to answer *A. B.* in a plea of trespass, &c.; and thereupon the said *A. B.* by —— his attorney, complains, that the said *C. D.* &c. (*stating the cause of action.*)

(§ 21.) Beginning of declaration in trespass, by original writ in K. B. or C. P. *Ante*, 45.

In the King's Bench, &c. (*stating the court, and term, as above.*)
—— (to wit.) *Richard Roe* was attached to answer *John Doe*, in a plea of trespass and ejectment, &c.; and thereupon the said *John Doe*, by —— his attorney, complains, that whereas, &c. (*stating the demise, entry and ouster, or several demises, entries and ousters, as in a declaration in ejectment by bill, in the King's Bench or Exchequer; for which see Prac. Append. Chap. XLVI.* § 26, 7. pp. 622, 3.)

(§ 22.) The like in ejectment. *Ante*, 45.

Schedule referred to by R. T. 1 W. *IV. of Forms of Counts on Promissory Notes, and Bills of Exchange, &c.; and directions respecting them.*

(§ 23.) *Ante*, 45, 6.

For that whereas the defendant, on the —— day of ——, in the year of our Lord ——, at *London*, (*or, in the county of* ——,) made his promissory note in writing, and delivered the same to the plaintiff, and thereby promised to pay to the plaintiff £ ——, —— days (weeks *or* months) after the date thereof, (*or as the fact may be,*) which period has now elapsed; (*or, if the note be payable to A. B.*) and then and there delivered the same to *A. B.*, and thereby promised to pay to the said *A. B.* or order, £ ——, —— days (weeks *or* months) after the date thereof, (*or as the fact may be,*) which period has now elapsed; and the said *A. B.* then and there indorsed the same to the plaintiff, whereof the defendant then and there had notice, and then and there in consideration of the premises, promised to pay the amount of the said note to the plaintiff, according to the tenor and effect thereof.

Count on a promissory note, against the maker, by payee or indorsee, (*as the case may be.*)

Whereas one *C. D.* on the —— day of ——, in the year of our Lord ——, at *London*, (*or, in the county of* ——,) made his promissory note in writing, and thereby promised to pay the defendant

Count on a promissory note, against payee, by indorsee.

or order £ ——, —— days (weeks *or* months) after the date thereof, (*or as the fact may be,*) which period has now elapsed; and the defendant then and there indorsed the same to the plaintiff, (or, *and the defendant then and there indorsed the same to X. Y. and the said X. Y. then and there indorsed the same to the plaintiff;*) and the said *C. D.* did not pay the amount thereof, although the same was there presented to him on the day when it became due; of all which the defendant then and there had due notice.

Count on a promissory note, against indorser, by indorsee.

Whereas one *C. D.* on ——, at *London,* (*or, in the county of* ——,) made his promissory note in writing, and thereby promised to pay to *X. Y.* or order, £——, —— days (weeks *or* months) after the date thereof, (*or as the fact may be,*) which period has now elapsed; and then and there delivered the said note to the said *X. Y.*, and the said *X. Y.* then and there indorsed the same to the defendant, and the defendant then and there indorsed the same to the plaintiff; (or, *and the defendant then and there indorsed the same to Q. R. and the said Q. R. then and there indorsed the same to the plaintiff;*) and the said *C. D.* did not pay the amount thereof, although the same was there presented to him on the day when it became due; of all which the defendant then and there had due notice.

Count on an inland bill of exchange, against the acceptor, by the drawer, being also payee.

Whereas the plaintiff, on ——, at *London,* (*or, in the county of* ——,) made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff £ ——, —— days (weeks *or* months) after the date (*or* sight) thereof, which period has now elapsed; and the defendant then and there accepted the said bill, and promised the plaintiff to pay the same, according to the tenor and effect thereof, and of his said acceptance thereof, but did not pay the same when due.

Count on an inland bill of exchange, against the acceptor, by the drawer, not being the payee.

Whereas the plaintiff, on ——, at *London,* (*or, in the county of* ——,) made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to *O. P.*, or order, £ ——, —— days (weeks *or* months) after the date (*or* sight) thereof, which period has now elapsed, and then and there delivered the same to the said *O. P.*; and the said defendant then and there accepted the same, and promised the plaintiff to pay the same, according to the tenor and effect thereof, and of his acceptance thereof; yet he did not pay the amount thereof, although

the said bill was there presented to him on the day when it became due, and thereupon the same was then and there returned to the plaintiff; of all which the defendant then and there had notice.

Count on an inland bill of exchange, against the acceptor, by indorsee.

Whereas one *E. F.* on ——, at *London*, (*or, in the county of* ——,) made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the said *E. F.* (or, *to H. G.*) or order, £ ——, —— days (weeks *or* months) after sight (*or* date) thereof, which period is now elapsed, and the defendant then and there accepted the said bill, and the said *E. F.* (*or, the said H. G.*) then and there indorsed the same to the plaintiff; (or, *and the said E. F. or the said H. G. then and there indorsed the same to K. J. and the said K. J. then and there indorsed the same to the plaintiff;*) of all which the defendant then and there had due notice, and then and there promised the plaintiff to pay the amount thereof, according to the tenor and effect thereof, and of his acceptance thereof.

Count on an inland bill of exchange, against the acceptor, by the payee.

Whereas one *E. F.* on ——, at *London*, (*or, in the county of* ——,) made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff £ ——, —— days (weeks *or* months) after the sight (*or* date) thereof, which period has now elapsed, and the defendant then and there accepted the same, and promised the plaintiff to pay the same according to the tenor and effect thereof, and of his acceptance thereof.

Count on an inland bill of exchange, against the drawer, by payee, on non-acceptance.

Whereas the defendant, on ——, at *London*, (*or, in the county of* ——,) made his bill of exchange in writing, and directed the same to *J. K.* and thereby required the said *J. K.* to pay to the plaintiff £ ——, —— days (weeks *or* months) after the sight (*or* date) thereof, and then and there delivered the same to the said plaintiff, and the same was then and there presented to the said *J. K.* for acceptance, and the said *J. K.* then and there refused to accept the same; of all which the defendant then and there had due notice.

Count on an inland bill of exchange, against drawer, by indorsee, on non-acceptance.

Whereas the defendant, on ——, at *London*, (*or in the county of* ——,) made his bill of exchange in writing, and directed the same to *J. K.* and thereby required the said *J. K.* to pay to the order of the said defendant £ ——, —— days (weeks *or* months) after the sight (*or* date) thereof, and the said defendant then and there in-

dorsed the same to the plaintiff; (or, *and the said defendant then and there indorsed the same to L. M. and the said L. M. then and there indorsed the same to the plaintiff;*) and the same was then and there presented to the said *J. K.* for acceptance, and the said *J. K.* then and there refused to accept the same; of all which the defendant then and there had due notice.

Count on an inland bill of exchange, against indorser, by indorsee, on non-acceptance.

And whereas one *N. O.* on ——, at *London*, (*or, in the county of* ——,) made his bill of exchange in writing, and directed the same to *P. Q.* and thereby required the said *P. Q.* to pay to his order, £ ——, —— days (weeks *or* months) after the date (*or* sight) thereof, and the said *N. O.* then and there indorsed the said bill to the defendant, (or, *to R. S. and the said R. S. then and there indorsed the same to the defendant,*) and the defendant then and there indorsed the same to the plaintiff, and the same was then and there presented to the said *P. Q.* for acceptance, and the said *P. Q.* then and there refused to accept the same; of all which the defendant then and there had due notice.

Count on an inland bill of exchange, against payee, by indorsee, on non-acceptance.

Whereas one *N. O.* on ——, at *London*, (*or, in the county of* ——,) made his bill of exchange in writing, and directed the same to *P. Q.* and thereby required the said *P. Q.* to pay to the defendant, or order, £ ——, —— days (weeks *or* months) after the sight (*or* date) thereof, and then and there delivered the same to the defendant, and the defendant then and there indorsed the said bill to the plaintiff, (or, *to R. S. and the said R. S. then and there indorsed the same to the plaintiff,*) and the same was then and there presented to the said *P. Q.* for acceptance, and the said *P. Q.* then and there refused to accept the same; of all which the defendant then and there had due notice.

Direction for declarations on bills, where action brought after time of payment expired.

1st. On bills payable after date.

If the declaration be against any party to the bill except the drawee or acceptor, and the bill be payable at any time after date, and the action not brought till the time is expired, it will be necessary to insert, as in declarations on promissory notes, immediately after the words denoting the time appointed for payment, the following words, viz.: *which period has now elapsed,* and, instead of averring that the bill was presented to the drawee for *acceptance,* and that he refused to *accept* the same, to allege that the drawee (naming him,) *did not pay the said bill, although the same was there presented to him, on the day when it became due.*

And if the declaration be against any party except the drawee or acceptor, and the bill be payable at any time after sight, it will be necessary to insert, after the words denoting the time appointed for payment, the following words, viz.: *and the said drawee* (naming him,) *then and there saw and accepted the same, and the said period has now elapsed,* and, instead of alleging that the bill was presented for acceptance and refused, to allege that the drawee (naming him,) *did not pay the said bill, although the same was presented to him, on the day when it became due.*

2d. On bills payable after sight.

If a *note* or *bill* be payable at *sight,* the form of the declaration must be varied, so as to suit the case, which may be easily done.

Directions for declarations on bills, or notes, payable at sight.

Declarations on foreign bills may be drawn according to the principle of these forms, with the necessary variations.

On foreign bills.

Schedule of Common Counts.

(§ 24.)
Ante, 45, 6.

Whereas the defendant on ——, at *London,* (*or, in the county of* ——,) was indebted to the plaintiff in £ ——, for the price and value of goods then and there bargained and sold (*or* sold and delivered) by the plaintiff to the defendant, at his request:

Goods bargained and sold, or sold and delivered.

And in £ ——, for the price and value of work then and there done, and materials for the same provided, by the plaintiff for the defendant, at his request:

Work, and materials.

And in £ ——, for money then and there lent by the plaintiff to the defendant, at his request:

Money lent.

And in £ ——, for money then and there paid by the plaintiff for the use of the defendant, at his request:

Money paid.

And in £ ——, for money then and there received by the defendant for the use of the plaintiff:

Money received.

And in £ ——, for money found to be due from the defendant to the plaintiff, on an account then and there stated between them.

Account stated.

And whereas the defendant afterwards, on, &c. in consideration of the premises respectively, then and there promised to pay the said several monies respectively to the plaintiff, on request: Yet he

General conclusion.

hath disregarded his promises, and hath not paid any of the said monies, or any part thereof; to the plaintiff's damage of £ ——, and thereupon he brings suit, &c.

Direction as to the general conclusion.

If the declaration contains one or more counts against the maker of a note, or acceptor of a bill of exchange, it will be proper to place them first in the declaration, and then in the general conclusion to say, promised to pay the said *last-mentioned several monies respectively.*

(§ 25.) Affidavit of service of two summonses, and non-attendance thereon.

Ante, 56.

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, &c. (§. 6.)

I. K. of —— clerk to Mr. *G. H.* attorney for the defendant in this cause, maketh oath and saith, that he this deponent did, on the —— day of —— instant, (*or* last,) personally serve Mr. *E. F.* who acts as attorney or agent for the plaintiff in this cause, with a true copy of the first summons hereunto annexed; (*or, if served on a clerk or servant, say,* "did on (&c.) serve a true copy of the first summons hereunto annexed, on Mr. *E. F.* who acts as attorney (*or*, agent) for the plaintiff in this cause, by leaving the same at the house of the said *E. F.* in ——, with his clerk or servant there"); and at the same time shewed him the said original first summons: And this deponent further saith, that he did duly attend the said first summons, at the time therein mentioned, at the chambers of the Honourable Mr. Justice (*or* Baron) ——, in *Serjeants'* Inn *Chancery* Lane, *London;* but that the said plaintiff's attorney (*or* agent) did not, nor did any other person or persons on his behalf, attend the said first summons, at the time aforesaid, to the knowledge or belief of this deponent: And this deponent further saith, that he did, on the —— day of —— instant, personally serve the said *E. F.* with a true copy of the second summons hereunto annexed, (*or, if served on a clerk or servant,* "did on, (&c.) serve a true copy," *&c. as before*); and at the same time shewed him the said original second summons: And this deponent further saith, that he hath this day duly attended the said second summons, at the chambers of the Honourable Mr. Justice (*or* Baron) ——, in *Serjeants'* Inn, *Chancery* Lane, *London;* but that the said plaintiff's attorney (*or* agent) hath not, nor hath any other person on his behalf, attended the said second summons, to the knowledge or belief of this deponent.

I. K.

Sworn, (&c.)

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, &c. (§ 6.)

The following are the full particulars of the plaintiff's demand, under the counts in *indebitatus assumpsit*, (*or debt* on simple contract,) contained in the declaration in this cause.

(*Here state the different items of the plaintiff's demand fully, with the date and sum to each item.*)

Yours, &c.

E. F. plaintiff's attorney, (*or* agent.)

—— 18 ——

To Mr. *G. H.*

defendant's attorney, (*or* agent.)

(§ 26.) Full particulars of plaintiff's demand, when they can be comprised within *three* folios.

Ante, 65, 6.

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, &c. (§ 6.)

This action is brought for the recovery of the sum (*or* balance) of ——*l.* which the plaintiff claims to be due to him from the defendant, for the price and value of goods sold and delivered by the plaintiff to the defendant; (*or* for the price and value of work done, and materials for the same, provided by the plaintiff for the defendant; *or* for money lent and paid by the plaintiff, to and for the use of the defendant; *or* for money received by the defendant for the use of the plaintiff; *or* for use and occupation, &c. *or other cause of action constituting the plaintiff's claim,*) between the —— day of —— 18——, and the —— day of —— 18——; and (*if there has been an account stated between the parties,*) for money found to be due from the defendant to the plaintiff, on an account stated between them.

The above is a statement of the nature of the plaintiff's claim, and the amount of the sum (*or* balance) which he claims to be due to him; the full particulars of which cannot be comprised within *three* folios.

Yours, &c. (*as in last.*)

(§ 27.) Statement of plaintiff's claim, where the full particulars cannot be comprised within *three* folios.

Ante, 65, 6.

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, &c. (§ 6.)

The following are the particulars of the defendant's set-off in this action;

(§ 28.) Particulars of defendant's set-off.

Ante, 66.

(*Here state the particulars of the set-off, in like manner as in the full particulars of the plaintiff's demand.*)

Your's, &c.

G. H. defendant's attorney, (*or* agent.)

——18——.

To Mr. *E. F.*

plaintiff's attorney, (*or* agent.)

(§ 29.) Summons for leave to plead several matters, or make several avowries, or cognizances. *Ante*, 70, 71.

B. } Let the plaintiff's attorney or agent attend me, at my
v. } chambers in *Serjeants'* Inn, to-morrow, at —— of the clock
D. } in the —— noon, to shew cause, why the defendant should not have leave to plead several matters, (*or* to make several avowries, or cognizances) in this cause, to wit: (*Here state concisely the nature of the proposed pleas, avowries, or cognizances*[a].) Dated, &c. (§ 5.)

(§ 30.) Short abstract or statement of intended pleas, avowries, or cognizances. *Ante*, 70, 71.

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, &c. (§ 6.)

The following is a short abstract or statement of the pleas intended to be pleaded, (*or* "of the avowries or cognizances intended to be made") in this cause:

(*Here state concisely the nature of the proposed pleas, &c. as in the summons.*)

(§ 31.) Judge's order thereon. *Ante*, 70, 71.

B. } Upon hearing the attornies or agents on both sides, I or-
v. } der, that the defendant have leave to plead several matters
D. } (*or* "to make several avowries or cognizances") in this cause, to wit:

(*Here state concisely the nature of the pleas permitted to be pleaded, or avowries or cognizances to be made, as in the summons.*) Dated &c. (§ 5.)

—— (Judge's *or* Baron's name.)

[a] It should be remembered, that no summons or order is necessary in the following cases, that is to say, where the plea of *non assumpsit*, or *nil debet*, or *non detinet*, with or without a plea of tender as to part, a plea of the statute of limitations, set-off, bankruptcy of the defendant, discharge under an insolvent act, *plene administravit*, *plene administravit præter*, infancy, and coverture, or any two or more of such pleas shall be pleaded together; but in all such cases, a rule will be drawn up by the proper officer, upon the production of the engrossment of the pleas, or a draft or copy thereof. *Ante*, 70, 71.

B. } It is ordered, that the defendant have leave to plead several matters, (*or* "to make several avowries, or cognizances,") to wit, &c. (*as in last.*)
v. }
D. }

By the Court.

(§ 32.) Rule to plead several matters. *Ante*, 70, 71.

In the King's Bench, &c. (§ 10.)

A. B. plaintiff, &c. (§ 6.)

(§ 33.) Notice requiring admission on trial of copy of judgment, &c. *Ante*, 82, 3.

Take notice, that the plaintiff (*or* defendant) intends to give in evidence, on the trial of this cause, an examined copy of a judgment obtained by —— against ——, in his Majesty's court of ——, in —— term, in the —— year of his reign, (*or* "of a certain writ of ——, issued out of his Majesty's court of ——, by and at the suit of ——, against ——;" *or* "of a certain act of parliament," *or other public document, describing it;*) which copy is now produced and shewn to you, marked ——: And I am willing to leave such copy with you, if required, for a reasonable time, in order that you may examine the same with the record of the said judgment, (*or* "writ," &c.) if you think proper: And I do hereby require you to admit such copy, and sign an agreement that the same shall and may be read in evidence on the said trial, without further proof, as and for a true copy of the said judgment, (&c.) Dated, &c. (§ 6.)

Your's &c.

—— plaintiff's (*or* defendant's) attorney, (*or* agent.)

To Mr. ——,
defendant's (*or* plaintiff's) attorney,
(*or* agent.)

B. } Let the defendant's (*or* plaintiff's) attorney or agent attend me, at my chambers in *Serjeants'* Inn, to-morrow, at —— of the clock in the —— noon, to shew cause, why the defendant (*or* plaintiff) should not, on the trial of this cause, admit the handwriting of ——, to a certain agreement, (*or* "bill of exchange," *or* "promissory note," &c. *or* "the execution of a certain writing obligatory," *or* "indenture," &c.) bearing date, (&c.) and stated upon the pleadings in this cause: And, notice is hereby given, that the witness intended to be called to prove such handwriting, (*or* "execution,") is —— of ——, ——. (*stating the name, description, and place of abode of the intended witness.*) Dated, &c. (§ 5.)
v. }
D. }

—— (Judge's *or* Baron's name.)

(§ 34.) Summons, requiring admission of handwriting to, or execution of, written instrument, stated upon the pleadings. *Ante*, 83.

ADDENDA.

In the last number of Messrs. *Barnewall* and *Adolphus's* Reports, (just published,) Vol. II. p. 446, there is a general Rule of the Court of King's Bench, made in *Easter* Term, 1 W. IV., 1831, in consequence of the alteration of the Terms and Returns, which is not noticed in the body of the work; whereby it is ordered, that "instead of the words 'the month of *Easter*, or Morrow of All Souls,' contained in the rule of this court of *Easter* Term, in the fifth year of King *William* and Queen *Mary*, for regulating the proceedings upon declarations delivered to prisoners in gaol, the words '*thirteenth* day of *Easter* Term, and *thirteenth* day of *Michaelmas* Term', be respectively substituted, unless such *thirteenth* day should happen to be a *Sunday*, and then, that the *fourteenth* day of those terms respectively be substituted."

There is also a case reported in the last number of Mr. *Bingham's* Reports, (just published,) 8 V. 145, in which it was decided, on the rule of Trin. 1 W. IV. *reg.* II., that when the bill of particulars is appended to the record, pursuant to that rule, it is not necessary to prove the delivery of it to the defendant.

AN

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THE END.

G. Woodfall, Printer, Angel Court, Skinner Street, London.